

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

APRIL 18, 2006

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES	Commissioner
------------------	--------------

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary (BZA)
BEVERLY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
MATT JESICK
JOHN MOORE
JOEL LAWSON

This transcript constitutes the minutes
from the Public Hearing held on April 18, 2006.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

AGENDA ITEM

PAGE

WELCOME:

Geoffrey Griffis 6

JOHNSON MEMORIAL BAPTIST CHURCH

APPLICATION NO. 17458 - ANC-7E: 11

WITNESS:

Nate Bush 12

OFFICE OF PLANNING:

Matthew Jesick 38

ANC-7E:

Naomi Robinson 43

PERSONS IN OPPOSITION:

Karen Wingfield 46

CLOSING REMARKS:

Nate Bush 65

SET FOR MAY 2ND DECISION MAKING: 72

SPECIFICALLY REQUESTED MATERIAL: 73

JUBILEE HOUSING, INC.

APPLICATION NO. 17456 - ANC-1C: 80

WITNESS:

Christine Roddy 81

James Knight 84

Bill Bonstra 95

OFFICE OF PLANNING:

John Moore 112

EXHIBIT 24 - DEPT. OF HEALTH RECOMMENDATION: 115

EXHIBIT 25 - ANC-1C REPORT: 115

PERSONS IN OPPOSITION:

Stephen McKevitt 116

Margaret Devoe 123

F. Steven Kijek 131

CLOSING REMARKS:

Christine Roddy 150

SET FOR MAY 2ND DECISION MAKING: 151

SPECIFICALLY REQUESTED MATERIAL: 151

PRELIMINARY MATTERS:

APPEAL OF ADVISORY NEIGHBORHOOD COMMISSION

APPEAL NO. 17449:

Withdrawal Request 155

3DG/3400 11TH STREET LLC

APPLICATION NO. 17457:

Request for Continuance 155

Reschedule Hearing for June 27th 157

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>BROOKLAND UNION BAPTIST CHURCH</u>	
<u>APPLICATION NO. 17454 - ANC-5A:</u>	158
Request For Party Status:	161
Grant Party Status to Concerned Neighbors of Brookland Union Baptist Church:	167
<u>WITNESS:</u>	
C. J. Malloy	167
James Lanier	190
<u>CROSS EXAMINATION OF C. J. MALLOY:</u>	213
<u>OFFICE OF PLANNING:</u>	
Karen Thomas	215
<u>CROSS EXAMINATION OF KAREN THOMAS:</u>	221
<u>ANC-5A07:</u>	
William Boston	227
Exhibit 26 - ANC Report	228
<u>CROSS EXAMINATION OF WILLIAM BOSTON:</u>	228
<u>PARTY IN OPPOSITION:</u>	
Jammie McKay	231
Michelle Sedgewick	233
Fritz von Fleckenstein	237
Chester Porter	244
Lauren Wheeler	250
<u>CLOSING REMARKS:</u>	
C. J. Malloy	258
James Lanier	260
<u>MOTION TO DENY APPLICATION 17454:</u>	262
<u>VOTE TO DENY APPLICATION 17454:</u>	268
 <u>PAULINE S. NEY</u>	
<u>APPLICATION NO. 17446 - ANC-2D:</u>	272
<u>ANC-2D:</u>	
Sandra Perlmutter	273
<u>OFFICE OF PLANNING:</u>	
Joel Lawson	282
<u>CROSS EXAMINATION OF JOEL LAWSON:</u>	289
<u>PERSONS IN OPPOSITION:</u>	
Helen Starr	296
Eleanore Wotherspoon	324
Sherry Spurlock	337
<u>CROSS EXAMINATION OF SHERRY SPURLOCK:</u>	355
Julia Rota	362
Phil Hendrickson	372
Marie Drissel	378
Nelly Guacheta	386
Kindy French	388
Guy McMichael	390
Kathleen Beggs	398

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

AGENDA ITEM

PAGE

APPLICATION NO. 17446 - CONTINUED:

REBUTTAL WITNESS:

John Hensley 415

CROSS EXAMINATION OF JOHN HENSLEY: 429

CLOSING REMARKS:

Carolyn Brown 452

SET FOR DECISION IN JUNE 2006: 460

SPECIFICALLY REQUESTED MATERIAL: 461

ADJOURN:

Geoffrey Griffis 467

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

P-R-O-C-E-E-D-I-N-G-S

10:07 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our 18th of April 2006 morning hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me this morning is the Vice Chair, Ms. Miller, and also Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann and our Zoning Commissioner with us this morning will be Mr. Jeffries. He is a little bit late, but we expect him momentarily.

So to that, I will bring to your attention several very important things as we proceed in our morning hearings. First of all, our schedule is available for you. It is located at the table where you entered into the hearing room. You can pick it up and see where you are in our chronology for this morning's session. This morning is a full, full schedule, as it always is, but we anticipate going a little bit further into the morning than perhaps normal. I will update everybody as we get rolling on the specifics.

However, attendant to all cases this morning it should be known that we are being recorded.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 All proceedings before the Board of Zoning Adjustment
2 are recorded and they are recorded in two fashions.
3 The most important, of course, is the Court Reporter
4 sitting on the floor to my right. He is creating the
5 official transcript.

6 Attendant to that, I'm asking that
7 everyone, please, fill out two witness cards if you
8 are going to address the Board. Those two witness
9 cards should be done prior to coming forward. They
10 are located at the table where you entered into the
11 hearing room. They should be also in front, indeed,
12 they are, on the table where you will provide your
13 testimony. Those two cards go to the Court Reporter
14 prior to addressing the Board.

15 I would also ask that you turn off cell
16 phones and beepers, at this time, so we don't disrupt
17 anyone providing testimony and that we don't disrupt
18 the transmission of any of our important aspects of
19 the case.

20 The second means of transmission is it's
21 very exciting to announce that we are back on the
22 website, so we are being broadcast live on the Office
23 of Zoning's website, so anyone that is not here and
24 present can watch all of you present all of your
25 amazing and persuasive testimony this morning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 It is important to understand both of
2 those factors, however, directly that we are creating
3 a record before us today and the Board will only
4 deliberate and decide on the record that is created
5 before us. So it's very important if you want
6 something into the record, that you state it with a
7 microphone and the microphone should be on or you
8 submit it in writing.

9 But I'm getting a little ahead of myself,
10 because I should step back and say the order of
11 procedure for our hearings are as follows, both
12 special exceptions and variances follow this: First,
13 we hear from the applicant and the presentation of
14 their case. Secondly, we hear any Government reports
15 attendant to the application, the Office of Planning,
16 Department of Transportation, often give the Board
17 analysis. We will go through all of those.

18 Third, we will hear from the ANC within
19 which the property is located. Fourth, we will hear
20 from persons or parties in support of an application.
21 We hear all of their testimony. Fifth, we would hear
22 persons or parties in opposition to an application.
23 And sixth, the final step, after we have heard all of
24 those, we bring the applicant back up and we ask them
25 to provide any rebuttal testimony that they might have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 or provide any conclusions or last summation
2 statements.

3 After that, of course, the hearing is
4 ended and with that we also close the record. The
5 record is closed at the ending of the hearing, except
6 for any material that the Board will specifically
7 request and we will be very specific in the detail of
8 that, if we require additional information. We will
9 also be very specific of when that information is
10 required to be put into the record and submitted into
11 the Office of Zoning.

12 The Sunshine Act requires that this Board
13 conduct its hearings in the open and before the
14 public. We do enter into Executive Session both
15 during and after hearings on cases. This is in
16 accordance with our rules, regulations and procedure.
17 It is also in accordance with the Sunshine Act. Our
18 Executive Sessions are used primarily just to review
19 the record on cases, but often times can delve into
20 the deliberation of cases. I guarantee you, however,
21 that in accordance with the Sunshine Act and our rules
22 and regulations and procedure, that we do do a full
23 deliberation in the open and before the public.

24 All special exceptions and variances
25 before this Board are characterized as contested

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cases. Some are more contested than others, but
2 legally they are all contested cases. To that, we ask
3 that people present today not engage Board Members in
4 private conversation at a recess or at different times
5 when we are in hearing or not in hearing. We would
6 not want to give the appearance of receiving
7 information outside of the official record and if we
8 do not have private conversations, we, of course, can
9 avoid that appearance.

10 Let me say a very good morning to Mr.
11 Nyarku, who is on my very far left, with the Office of
12 Zoning, Ms. Bailey, closer in. The Office of Attorney
13 General is represented by Ms. Glazer. Mr. Moy, also
14 with the Office of Zoning will be in and out with us
15 this morning.

16 With that, I'm going to ask that everyone
17 that is going to provide testimony or thinking about
18 providing testimony if you would, please, stand at
19 this time and give your attention to Ms. Bailey. She
20 is going to swear you in.

21 MS. BAILEY: Would you, please, raise your
22 right hand?

23 (Whereupon, the witnesses were sworn.)

24 MS. BAILEY: Thank you.

25 CHAIRPERSON GRIFFIS: Excellent. Thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you all very much. With that then, we can move to
2 preliminary matters. Preliminary matters are those
3 which relate to whether a case will or should be heard
4 today, requests for postponements, continuances,
5 withdrawals, whether proper and adequate notice has
6 been provided to the application, these are elements
7 of preliminary matters.

8 I'm going to ask Ms. Bailey if she has any
9 preliminary matters. However, if anyone here present
10 has a preliminary matter attendant to any of the cases
11 on the schedule this morning, I'm going to ask that
12 you come forward and have a seat at the table in front
13 of us as an indication of having a preliminary matter.

14 Ms. Bailey, a very good morning to you.
15 Are you aware of any preliminary matters for the
16 Board's attention, at this time?

17 MS. BAILEY: And a very good morning to
18 you as well, Mr. Chairman, and to everyone in the
19 room. Staff does not have any, at this time, sir.

20 CHAIRPERSON GRIFFIS: Excellent. Not
21 noting anyone else present to bring an indication of
22 a preliminary matter, why don't we call the first case
23 for the morning?

24 MS. BAILEY: And that is the application
25 of Johnson Memorial Baptist Church, Application No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 17458, and it's pursuant to 11 DCMR 3103.2, for a
2 variance to allow church programs not conducted within
3 an existing church building under subsection 216.3,
4 and pursuant to 11 DCMR 3104.1, a special exception to
5 allow the use of an existing building for church
6 programs, that's Sunday school classes and a computer
7 training program, under section 216. The property is
8 zoned R-2 and it's located at 746 Ridge Road, S.E.,
9 also known as Square 5388, Lot 51.

10 CHAIRPERSON GRIFFIS: Good morning.

11 MR. BUSH: Turn it up?

12 CHAIRPERSON GRIFFIS: No, just turn it on.
13 There it's on.

14 MR. BUSH: Okay. Great.

15 CHAIRPERSON GRIFFIS: And then also, I'll
16 ask you just to state your name and address for the
17 record once and we can proceed.

18 MR. BUSH: Yes, Mr. Chairman, good morning
19 to you and to Members of the Commission. My name is
20 Nate Bush. I'm an attorney and I am the
21 representative for the applicant, Johnson Memorial
22 Baptist Church. This matter, as Ms. Bailey has
23 indicated, is before the Commission on behalf of the
24 applicant requesting a special exception to permit the
25 operation of Sunday school classes in a property that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 belongs to the church and is adjacent to the church.

2 But also we are requesting that the
3 property be allowed to be used to operate computer
4 programs, a computer training program, which we
5 believe is a benefit to the community and would
6 certainly have a significant impact on addressing some
7 of the real needs in our community. But more
8 specifically, under section 216.2, there is a
9 requirement that there is proof that demonstrate
10 several things.

11 One, we would like to indicate to you that
12 the operation of the program would be a not-for-profit
13 program. Ministries of Hope, a ministry within the
14 church itself will actually operate the computer
15 training programs. The purpose of operating that
16 computer training program is that we have identified
17 within the community, that's Ward 7, and particularly
18 the far northeast/southeast area of Ward 7, that there
19 is a significant unemployment. Much of it is due to
20 the lack of skills that the community, people in the
21 community do not have to avail themselves to
22 employment opportunities.

23 We believe, this is the Member of the
24 Johnson Memorial Baptist Church believe, that the
25 development and implementation of this training

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 program would enhance the skills levels of many of the
2 citizens in our immediate community and it would also
3 allow them to be more marketable in their skills, so
4 that they can seek employment. As I indicated under
5 216.2, the program would be operated by the Ministries
6 of Hope. It is a not-for-profit program.

7 The second point that we would like to
8 address is the location of the church building.
9 Significantly, we recognize that the property that is
10 in question here is located directly to -- adjacent to
11 Johnson Memorial Baptist Church. It is adjacent to
12 the church and it's separated by a small alley,
13 approximately 18 feet wide. Johnson has owned the
14 property for some time now and from time to time the
15 property has been used in various instances for
16 different kinds of administrative purposes, etcetera.

17 CHAIRPERSON GRIFFIS: How long have they
18 owned the property?

19 MR. BUSH: I believe we have owned the
20 property for, approximately, seven or eight years now.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. BUSH: I can check that though.

23 CHAIRPERSON GRIFFIS: That's all right.

24 MR. BUSH: But we have owned the property
25 for a significant period of time now. And during the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time, we have, on occasion, used the property for
2 various activities related to the property. In fact,
3 we believe that under 216.13, the property is in a
4 sense a part of an existing building, as we interpret
5 the statute. And the purpose of our interpretation,
6 obviously, is that because of our involvement with the
7 building, we own the building, we have used the
8 building in a number of instances, we believe that
9 that kind of tradition and history of use reflect that
10 it is within the statute for purposes of it being an
11 existing church building.

12 But in addition to that, we recognize the
13 fact that there are some additional issues that we
14 need to address, particularly with regards to
15 staffing. We would like to point out to the
16 Commission that, as I had indicated, the Ministry of
17 Hope, a ministry within the church, will operate the
18 program and all of the administrative staff and the
19 program staff that will be involved in that will be
20 volunteers, persons who are either in -- members of
21 the church who are volunteering to be a part of the
22 church program.

23 They are primarily going to be volunteers.
24 There is the possibility that perhaps the teacher or
25 some of those that are providing the technical

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 training may be employed, but we believe that with --
2 that those would be the only parties or persons who
3 would actually be receiving compensation for that.
4 The great majority of the persons far beyond the 75
5 percent that's required by the statute clearly would
6 be volunteers or would be volunteering their time or
7 contributing their services to the program.

8 One of the issues that I know that the
9 Commission is very interested in hearing about is
10 whether or not the property in itself would be of such
11 an extent that it would propose an objection or cause
12 problems or noise within the community. To that
13 extent, I would like to say that Johnson has tried to
14 do extensive community outreach in the program, trying
15 to talk to the people in the community, trying to
16 address whatever concerns that they might have.

17 Johnson has been in that site for more
18 than 50 years. We have operated a church program in
19 the church itself for more than 50 years. Obviously,
20 the nature of the church programs are such that we
21 believe that the addition and the use of this computer
22 training program and, of course, also as a Sunday
23 School Satellite Program is not inconsistent with the
24 use that is actually taking place in and around that
25 site for quite some time now.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We also are of the opinion that there
2 would not be any significant additional noise or
3 disruption within that community that would cause
4 there to be a question as it relates to section 216.5.
5 I would like to also point out to the Commission that
6 Johnson and the property that is in question here is
7 located directly across from Fort Dupont Park. There
8 is almost a quarter mile of sidewalk and parking area
9 along the south side of Ridge Road that would be the
10 north side, north bounded or Ridge Road bounded with
11 Dupont for Dupont Park.

12 But in addition to that, the church itself
13 has a parking lot that has a number of parking spaces
14 on that. In our application, we indicated that we
15 would dedicate at least three of those parking spaces
16 for specific use for persons or individuals who may be
17 involved in computer training programs. We believe
18 that that dedication of those three parking spaces
19 would comply with the requirement for parking spaces
20 for at least 600 feet of used space.

21 So the dedication of those three parking
22 spaces alone, we believe, would address the issue.
23 But in addition to that, there are more than,
24 approximately, 35 parking spaces on the entire lot and
25 almost a quarter of a mile of available parking along

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Ridge Road on the south side. There's even more on
2 the north side of Ridge Road.

3 We do not believe that there would be any
4 significant disruption of the community. Also, we
5 would operate the program within a time period that
6 would be not inconsistent with the community's use and
7 enjoyment, quiet use and enjoyment of their own
8 property. The Sunday school classes I would like to
9 indicate would be operated within the confines of the
10 morning and -- I'm sorry, the early morning and late
11 early morning services.

12 What I mean by that is this, that we have
13 a 7:45 program and -- church program and we have an
14 11:00, 11:15 program. The Sunday school program for
15 which we are expected the special exception would be
16 operated at, approximately, 9:30 to 10:45. So we
17 believe that that is consistent with being within the
18 character, use and operation of the entire community
19 of property, but certainly would not be inconsistent
20 in terms of bringing any additional traffic or noise
21 into the community that would cause a conflict with
22 the existing statutes.

23 We believe that we will make every effort
24 to try to address any concerns that anyone in the
25 community might have. We understand that this is --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that there are always going to be concerns and perhaps
2 even objections, but notwithstanding that Johnson
3 wants to be a good neighbor to everybody, all of our
4 neighbors. We are part of the community.

5 As I had indicated, I live in that
6 community around the corner from the church. I walk
7 to church on occasions and it's very important for us
8 to make sure that we have a good compatible working
9 relationship with all of the members of the community.
10 So we are open to address any specific concerns that
11 might exist.

12 Let me quickly, I know, move to a
13 conclusion that so far as 216.6 and 216.7 are
14 concerned, there will -- the program primarily -- the
15 computer training program is primarily a program that
16 will be staffed by people who are either referred or
17 who will be recruited. No signs are going to be
18 posted around the property. No one is going to be
19 soliciting people to participate.

20 The programs, the people who will be
21 involved in the computer training program will come
22 into the program as a result of referral coming from
23 community organizations, from community people,
24 etcetera, or an outreach program as a result of the
25 relationship that we have with the Department of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Education and also the Department of Employment
2 Services. That's how individuals would actually
3 participate and become involved in the program.

4 We are asking the Commission if it would
5 allow us an exception to 216.7 to grant a five year
6 period of operation as opposed to the three years.
7 The program, the computer training program, at least,
8 is a program that is evolved and it is developing. We
9 do not -- we have not identified staff yet. We have
10 the intent and specific ideas in terms of how it's
11 going to operate, but it's going to take time for the
12 program to get off the ground to start operating.

13 And it's our hope that while we are ready
14 to move forward as expeditiously as possible, assuming
15 -- not assuming, but hoping for a favorable
16 recommendation from the Commission, at that same time
17 we know that once the program starts, it's going to
18 take time to really become operational. And we
19 believe that the three year period that's actually
20 permitted under the statute, while it would certainly
21 give us an adequate opportunity to get the program
22 moving forward, etcetera, we believe that a five year
23 period of operation might be more realistic in terms
24 of investing the program with the kind of foundation
25 that will ensure its success.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And if the program is successful, it will
2 mean and ensure the success of people who are going to
3 be participating throughout the community. So we are
4 asking that under 216.7 that the Commission will allow
5 us to have a five year period of operation as opposed
6 to the six year -- I'm sorry, the required three year
7 period of operation.

8 We have made a significant effort to
9 communicate with people throughout the community. In
10 one of the attached documents to the prehearing
11 statement that I have submitted to you is a petition.
12 Not a very professional petition, but a petition that
13 was circulated throughout the community by volunteers
14 from the church to not only inform people in the
15 community of the program, but asking for their support
16 for the program. And I believe that there are a
17 number of signatures that are reflected in the
18 document that you have before you with signatures from
19 throughout the adjacent community of Ridge Road, Texas
20 Avenue, Hildreth Street and other streets indicating
21 people's willingness to support the program.

22 Also, we have made an extended effort to
23 reach out to the ANCs, ANC-7E, obviously, we are very
24 pleased to have their recommendation, which you will
25 hear from later, but we have also reached out to other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ANCs and community organizations, civic associations
2 informing them of our interest in establishing this
3 program and also encouraging them to identify people
4 within their own jurisdictions for possible referrals
5 to the program.

6 It's our view that the request that we are
7 -- the special exception that Johnson Memorial is
8 requesting, the exception to be able to use the
9 property adjacent to it to operate the computer
10 training program and for Sunday school programs is
11 reasonable. It is permitted by the statute, assuming
12 the Commission is willing to adhere to our request and
13 we do not believe that it will pose such a disruption
14 to the community that it would cause any problems.

15 It's our hope that upon hearing all of the
16 information that the Commission will have a favorable
17 response to our request. Thank you very much.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much, Mr. Bush. Well said and I would note
20 that you have added additional documentation to your
21 prehearing statement which greeted us as we came up
22 here this morning. I know the other Board Members
23 have started to take a look at that and you have
24 pointed out a few of the aspects that are in it.

25 One quick correction, which I know you are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 aware of, however, in your statements you kept
2 referring to us as a Commission. We are the Board and
3 not the Commission.

4 MR. BUSH: Right, yes. Okay.

5 CHAIRPERSON GRIFFIS: But that being said,
6 it is an interesting aspect of 216.3 and I think
7 that's where I have most of my trouble and that is the
8 section seems to be ambiguous as to what falls under
9 that. As it's read, it's the part of the church
10 program conducted on the property shall be carried on
11 within the existing church building(s) or
12 structure(s).

13 And you have addressed some of that by
14 saying well, the church owns the adjacent property
15 across the alley and has been functioning within it.
16 Therefore, it establishes the fact that we can
17 continue functioning in the building, which perplexes
18 me, because I don't know what the next applicant might
19 say and what their use is and I don't think anyone has
20 difficulty with the use you are proposing.

21 But what has been the past use of the
22 property?

23 MR. BUSH: And let me be very clear, Mr.
24 Chairman. My interpretation of the statute was geared
25 towards trying to address the specific need of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 complying with that section.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. BUSH: And trying to address it in a
4 manner most favorable to our position that we are
5 advocating.

6 CHAIRPERSON GRIFFIS: Oh, sure.

7 MR. BUSH: We recognize that there is a
8 technical distinction here. Now, this is our
9 proposition. This is the position that Johnson has
10 taken and it's simply this, that because of the close
11 proximity of the property, the only thing that
12 separates the property, the church itself and the
13 property in question --

14 CHAIRPERSON GRIFFIS: Is the 18 foot
15 alley.

16 MR. BUSH: -- is an alley. We have used
17 the property as a site where we have housed additional
18 chairs for the church. Sometimes we have used the
19 property for occasional meetings if we have an
20 overflow and we need some additional space, we will
21 use the property for that purpose. We have used the
22 property in such a way as to consider it a part of the
23 actual church property itself, the greater property
24 that is, the sanctuary, the parking lot and then right
25 across the alley there is this little church.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We have used it in such a way as to
2 interpret that use and that history of use, that
3 tradition of use, as being in compliance with the idea
4 that it is a part of the actual church property
5 itself.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. BUSH: So that's an interpretation,
8 Mr. Chair.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. BUSH: We recognize that. We do
11 propose an alternative for the Board and that is that
12 if you would allow us a variance, if you do not
13 believe that it would automatically comply with the --
14 with that part of the statute which says that it's a
15 part of the existing building.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. BUSH: We are asking for a variance.

18 CHAIRPERSON GRIFFIS: Good. And that
19 brings up the next is actually in 216.7 you are
20 requesting a variance and that's the time.

21 MR. BUSH: That's correct.

22 CHAIRPERSON GRIFFIS: Okay. I don't think
23 we will spend a lot of time on 216.3, but I mean we'll
24 certainly hear from other Board Members if they have
25 questions. I don't see the utility of 216.3 being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 written in the regulations. If all it takes to
2 establish compliance with that is the ownership of the
3 church, right? Because then I don't find anything in
4 the regulations that then defines what your parameters
5 are.

6 So hypothetically, there would be nothing
7 that would prohibit you from purchasing a property
8 across the city calling it part of the building
9 structures and operating that way. Is that a problem?
10 I don't --

11 MR. BUSH: Yes, it is. I'm sorry, Mr.
12 Chairman.

13 CHAIRPERSON GRIFFIS: Do you think it is?
14 I mean, I don't know if it's a problem.

15 MR. BUSH: It is a problem to this extent,
16 if I may? We are peculiar in this instance which
17 separates us from the example that you gave, unlike
18 us, that is Johnson Memorial, owning a property in
19 this vicinity and operating a church where we are
20 located. This property is right next to us.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. BUSH: So there is a relationship.
23 There is a contact, an association with this property.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. BUSH: Because there is a nexus to it,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that's the first distinction I would draw.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. BUSH: The second distinction that I
4 would draw is that there is a traditional history of
5 use and interaction with that property for at least
6 the period of time that we have owned it. So the
7 nexus of the property to us, the interaction with the
8 property as it results to existing church activities,
9 those are the kind of criteria that we think would
10 segregate us from other examples that may be given of
11 some church or any other building.

12 CHAIRPERSON GRIFFIS: Sure, sure. I don't
13 disagree with your logic and I think the adjacency is
14 an important factor here. What I look at and I don't,
15 to be clear, know that I have too much trouble with
16 the specifics of this case and I think there may well
17 be elements that differentiate it from any other case,
18 but just in keeping consistent the interpretation and
19 the measuring threshold for any other special
20 exceptions that come in, I'm just trying to get a
21 firmer definition of, one, what was the Zoning
22 Commission's intent when they wrote 216.3.

23 MR. BUSH: Yes.

24 CHAIRPERSON GRIFFIS: And then two, how do
25 we actually measure an applicant against 216.3. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I'm looking at specifically at yours, which I
2 understand, and then generally of how are we supposed
3 to be consistent in our interpretation and review of
4 compliance or out of compliance with 216.3.

5 I don't think we can answer that, but just
6 to -- immediately, perhaps within the hearing we can,
7 but I'll move on to other issues or other questions
8 that the Board might have of Mr. Bush regarding the
9 special exception and/or variance, of course, for the
10 timing. Mr. Etherly?

11 BOARD MEMBER ETHERLY: Thank you very
12 much, Mr. Chair. Mr. Bush, I appreciate your
13 presentation. I think you hit on all the key topic
14 areas related to 216.3. So my comment is perhaps more
15 directed to the observation that was made by the
16 chair.

17 MR. BUSH: Okay.

18 BOARD MEMBER ETHERLY: I agree in part
19 with where the Chair is coming from with regard to
20 216. I think what it signals is to an extent the
21 evolution of what churches are now engaged in.
22 Perhaps, and I'm just hazarding a guess here, 216 was
23 probably authored at a time when churches were
24 probably very much more in a traditional phase, a
25 traditional model where you had the church building,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you had an immediately adjacent structure or building
2 where perhaps some type of secondary or tertiary
3 programs were offered and that was the end of the
4 inquiry.

5 Whereas today, we have a much more dynamic
6 and fluid church model, if you will. So in response
7 to the Chair's concern, I think 216 is probably
8 written in contemplation of that more traditional type
9 of model. I think what has been presented here and I
10 think in particular Mr. Bush's use of the term nexus,
11 if you will, I always try to be careful with reading
12 too much of additional terminology and language into
13 the regulations here, but I think your use of that
14 term is somewhat helpful in terms of providing some
15 guidance for my colleagues and I in terms of how we
16 think about this.

17 The logical concern of the Chair, which I
18 believe is rightfully put, is let's say you have a
19 situation where there is a church building across town
20 from a particular church. Nevertheless, it is indeed
21 a viable and active part of the church menu of
22 services and programs. Would you be able to, in that
23 instance, use 216? That's not a question for you to
24 answer nor for Johnson Memorial to answer, but it is
25 conceivably a set of circumstances that many

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 communities might find themselves confronted with.

2 And I think that is a logical concern for
3 the Zoning Regs to try to sort out. And 216 probably
4 is not drafted in the best possible way to do that
5 right now. But I think with regard to this particular
6 instance, I'm very comfortable with the presentation
7 that you have made and your hitting on all of the key
8 elements, in my opinion, of 216. Thank you very much,
9 Mr. Chair.

10 CHAIRPERSON GRIFFIS: Excellent. Thank
11 you. Others?

12 VICE CHAIR MILLER: Good morning, Mr.
13 Bush.

14 MR. BUSH: Good morning.

15 VICE CHAIR MILLER: I would just ask you
16 we're talking about this provision 216.3 and what is
17 meant by property and you have offered an
18 interpretation that adjacent property falls within a
19 reasonable interpretation of this regulation. My
20 question is did you check the Zoning Commission order
21 enacting this regulation to see if there was any
22 guidance in that, you know, with respect to this
23 provision?

24 MR. BUSH: No, actually, I did engage in
25 extensive discussion with employees of the Commission.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 In addition to that, I did try to do as much research
2 as possible to try to, as the Chairman indicated, get
3 an understanding of what was the intent here and if,
4 in fact, the circumstance that Johnson -- the
5 applicant is operating under. If they vary from what
6 the specific intent was, then is this an opportunity
7 for expansion or evolution, as Mr. Etherly said, in
8 terms of this particular issue.

9 If I may just depart a moment, but to
10 address your question, often when deliberative bodies,
11 as yourself, are in situations where you have to make
12 decisions, not always will things be directly within
13 the precedent that exists. And there is going to be
14 from time to time a need for you to establish
15 additional criteria within which the decisions that
16 might be made.

17 And my argument here would simply be that
18 as it relates to 216.3, when there is a nexus, when
19 there is a history of active or ongoing use, those may
20 be additional criteria that may be of assistance to
21 this body in making a final decision in light of the
22 evolution that is taking place of the use of church
23 properties within this entire community.

24 CHAIRPERSON GRIFFIS: Good. Follow-up?

25 VICE CHAIR MILLER: No, I understand what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you're saying and I just think it's useful if the
2 Commission had offered some guidance in there that we
3 know what that was before we take our next step. And
4 if it's an empty slate, you know, then I understand
5 what you're saying. Where we take the circumstances
6 and see what's reasonable.

7 MR. BUSH: Yes. Thank you.

8 VICE CHAIR MILLER: Thank you.

9 CHAIRPERSON GRIFFIS: Other questions?
10 Let me ask is the ANC present, 7E? Is a
11 representative from 7E? Oh, good. Thank you very
12 much. I'm going to call you in just a moment.

13 Mr. Bush, last question just to address
14 the timing aspect. Of course, it is a variance. Did
15 you want to at all just briefly outline the test for
16 the variance which, of course, would go to the
17 uniqueness and practical difficulty?

18 MR. BUSH: Well, particularly, our concern
19 is that the variance in this particular instance,
20 obviously, with the property that has been zoned as R-
21 2, the situation that we have here is that this is a
22 unique proposal here, in that we are asking that if,
23 in fact, the Board would be willing to take a look at
24 this request that we are actually making, it's our
25 hope that it would not be inconsistent with the use of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 R-2 property.

2 We hope that it would not be of such a
3 manner that it would interfere with the quite, use and
4 enjoyment of the -- of other properties and people in
5 the community. And we hope that we would -- the
6 Commission -- I'm sorry, the Board would take the
7 additional step of recognizing that this is an
8 instance where there is a greater good that's being
9 served here.

10 CHAIRPERSON GRIFFIS: Sure.

11 MR. BUSH: And I know I may be stretching
12 it a little bit here, but there is a greater need
13 that's being served here and that is to give people in
14 the community, that are in such desperate need of it,
15 employable skills.

16 CHAIRPERSON GRIFFIS: Sure, sure. And I
17 think that's an important factor. And, of course,
18 we're not sitting in judgment of that program or what
19 it serves.

20 MR. BUSH: Sure.

21 CHAIRPERSON GRIFFIS: Obviously, we're
22 just limited to the unexciting zoning elements within
23 this opportunity. But I'm concerned with the variance
24 test based on some of the same assertions as the
25 special exception, because that does rise to a much

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 higher threshold and a uniqueness of an application
2 probably doesn't satisfy that test.

3 When I look at 216.3, I think that element
4 in its ambiguity might be able to be covered within
5 the parameters of the special exception review,
6 meaning the Board could conceivably look at the
7 adjacency element and not have to definitively define
8 the measuring, which would, essentially, start to
9 write the regulations, which is what the Commission
10 should do. But rather we take that into whether on
11 this adjacency whether any negative aspect or adverse
12 impact might happen with this specific application.

13 I can see us and I think other Board
14 Members are of the mind to pursue in that sense. The
15 variance, however, I think could not be taken in the
16 same realm. And then to that, as you look, let's look
17 at the realities. I mean, let's dig into the aspect
18 of timing. I think it is well said what you have
19 proposed is that you need five years to get up and
20 running and to get established.

21 However, as I read the regulations in
22 this, the three year timing and most special
23 exceptions, well, I shouldn't say most, not all
24 special exceptions have timing requirements. The
25 Commission obviously felt fairly strongly to put such

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a short term and such a definitive time. I think it
2 is, in fact, the reasoning behind it is so that it's
3 a very quick assessment of how things are going. And
4 if it's no problem, then it's no problem.

5 I mean, it's always a difficulty going
6 through this process, but it seems to be fairly
7 definitive in this time aspect. So that laying out
8 that you need five years to get up and running, I
9 think the Commission probably had, and as I read these
10 regulations, the idea that they want to have assessed
11 within three year time periods as you get up and
12 running and then as you start to function. That's
13 where I am, at this point though.

14 Any other follow-up, questions from the
15 Board?

16 BOARD MEMBER ETHERLY: If I could, Mr.
17 Chair?

18 CHAIRPERSON GRIFFIS: Yes.

19 BOARD MEMBER ETHERLY: Just on the
20 variance. On the variance piece, Mr. Bush, I agree
21 much more wholeheartedly with the Chair's position in
22 terms of a variance from 216.7. Part of the balance,
23 I think, that 216 tries to strike is recognizing the
24 integral role that churches play in our residential
25 communities and, of course, this is an R-2 District

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that we are talking about. But I think the time frame
2 suggests a concern with the impact of those
3 nonresidential aspects of a church building and a
4 church operation.

5 And I think in this instance, that's part
6 of the bar that you have to clear to kind of get to
7 your five years. And I think as the Office of
8 Planning's report puts it, their concern is that you
9 haven't necessarily offered -- I won't say haven't
10 offered anything, but any rationale for what may be
11 different about this particular community or this
12 particular piece of property that would support a
13 deviation from the three year time frame.

14 So just to kind of highlight for you where
15 we're, at least one Board Member, is on that
16 particular issue, I think that is a more difficult bar
17 that you haven't necessarily kind of cleared just yet.
18 With that in mind, is there anything that you can
19 speak to relative to the immediate environs or the
20 immediate block of where the subject property is
21 located regarding uses or other things that may in
22 part perhaps move you away from being a purely
23 residential type of -- I mean, I'm kind of, to use
24 your expression, stretching myself here, because I
25 kind of want to get there with you, but I'm having

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some challenges with that.

2 MR. BUSH: Mr. Etherly, the point that you
3 and the Chairman are making is a point that's well
4 taken. Obviously, as a matter of convenience, if I
5 may use that expression for Johnson, we would love to
6 have five years as opposed to three. But we recognize
7 the fact that even if we went with the statute itself
8 and only permitted us three years, we believe that we
9 can operate the program and get it going in such a
10 manner to not only when we come back, if we had to in
11 three years, to show that there is real community
12 support that whomever may have had concerns, we have
13 reached out to those individuals and we have resolved
14 those concerns in a manner that would be acceptable to
15 all.

16 So, obviously, in the real-world, I mean
17 the best possible benefit to us, we would like five,
18 but we do not believe that three years is going to be
19 detrimental to the program. We want the program to
20 develop and to grow and we want to make sure that we
21 have good support, so that when we come back we can
22 say that we have operated for three years and it is
23 well accepted in the community.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you very much, Mr. Bush. At this point then, let's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 move ahead unless there's other questions from the
2 Board, unless ANC has any cross examination of Mr.
3 Bush. Do you have any cross examination questions?

4 MS. ROBINSON: We have none.

5 CHAIRPERSON GRIFFIS: Excellent. ANC has
6 no cross at this point. We can go to the Office of
7 Planning for their analysis and report.

8 MR. JESICK: Good morning, Mr. Chairman
9 and Members of the Board. My name is Matt Jesick.
10 I'm with the Office of Planning. The applicant for
11 Case No. 17458 has requested approval for a church
12 program pursuant to section 216. They are also
13 requesting a special exception to allow parking on an
14 adjacent property, pursuant to section 2116.5, and
15 they have asked for a variance to section 216.7, which
16 regulates the authorization period for the church
17 program.

18 The Office of Planning recommends approval
19 of the special exceptions, but cannot support a
20 variance for extension of the approval time period.
21 Under section 216, the applicant must not only meet
22 the general special exception criteria, but, as you
23 have already discussed, they must meet a number of
24 specific criteria and the church has met those
25 criteria. The program will be non-for-profit. It

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 will be carried on, as you have discussed, within an
2 existing church building. The staff will be at least
3 75 percent volunteer and there will be no signs
4 outside the building.

5 Now, regarding 216.3, the Office of
6 Planning did feel that the existing house could be
7 considered a church building. We relied on the
8 existing ownership of the property, it's existing use
9 as a church space, but probably most importantly on
10 the adjacency of the property. The church does own
11 other properties in the neighborhood which are further
12 removed from the church and we would likely not
13 consider those to be existing church buildings,
14 because they are not immediately adjacent to the main
15 church property.

16 The other criteria under section 216 is
17 the approval period. And again, the applicant has
18 asked for an extension to five years, rather than the
19 standard three years. And I'll speak about the
20 variance in more detail in a moment. And the final
21 criteria under section 216 is that the program not be
22 objectionable because of noise and traffic. And the
23 Office of Planning feels that there will be no
24 significant impacts to traffic and noise.

25 But to further minimize the possibility of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 adverse neighborhood impacts, Office of Planning
2 recommends that the size of the classes be limited to
3 20 people for the computer training program and to 40
4 people for the Sunday school and that the hours of
5 operation be limited so that the computer training
6 program operates no later than 9:00 p.m. in the
7 evenings. I have discussed these conditions with the
8 applicant and they are in agreement with them.

9 Now, regarding the variance, as you know,
10 there is a three part test for variances. Is the
11 property unique or is there any other extraordinary
12 circumstance? Does that uniqueness impose a practical
13 difficulty on meeting the regulation? And third, can
14 relief be granted without detriment to the public good
15 or to the intent of the Zoning Regs?

16 And we feel that the applicant has not met
17 those tests. The property is not unique. And
18 although they may have to reapply in three years, that
19 is not a practical difficulty caused by any uniqueness
20 of the property. But most importantly, although
21 Office of Planning feels that there is no adverse
22 impact from the program, there can always be
23 unanticipated impacts and we felt that it is important
24 to keep that three year review period.

25 Again, Office of Planning supports the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 special exception for special exception for the church
2 program and for the parking on the main church
3 property. We feel it is a good program for the
4 community, but we cannot support the variance for
5 extension of the time period. Thank you.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you very much. Are there questions from the Board?
8 Ms. Miller?

9 VICE CHAIR MILLER: I just want to follow-
10 up on the issue regarding the interpretation of
11 property, including adjacent property. Is that based
12 on Office of Planning's just reasonable interpretation
13 of the regulation or did you go back and look at the
14 legislative history on this regulation?

15 MR. JESICK: Yes, we did not look at the
16 legislative history from the Zoning Commission when
17 they originally instituted the statute. We just
18 looked at good planning practice and what would be a
19 reasonable interpretation of church property.

20 VICE CHAIR MILLER: Okay. I just want to
21 follow-up a little bit, because I think that the
22 concern that's hanging around here is just, you know,
23 somewhat where do you draw the line if a church is
24 going to be buying up properties around it? Does that
25 get to be outside of this regulation? I mean, that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 could be a problem.

2 MR. JESICK: I would say if the church
3 establishes a contiguity of properties where they own,
4 you know, a block of properties, I think we could
5 expand the definition of what is, you know, an
6 existing church structure. But in this case, you
7 know, there are immediate neighbors, residential uses,
8 you know, right next to this property and, you know,
9 right across the alley to the rear, so we would be
10 unwilling, in this circumstance, to expand that
11 definition say down the street, you know, into the
12 middle of the existing residential neighborhood.

13 VICE CHAIR MILLER: I just wanted to
14 further say where I'm going on this. I think in this
15 case it doesn't look like it's a problem at all. I
16 mean, there is no objection in the community and it
17 fits. It's just looking out for a similar situation
18 down the road where maybe it is a problem, but it's
19 adjacent or whatever. So it might have been enveloped
20 in this definition now.

21 MR. JESICK: I see the concern with that.
22 I guess we looked at both the physical criteria being
23 adjacent and the nature of the program itself, you
24 know, what sort of impacts would that have with the
25 community. In this case, we haven't heard any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 objections from the community and the ANC is in
2 support of the program. We haven't received any phone
3 calls or emails opposing the program.

4 In fact, we did speak with a neighbor
5 directly across the alley to the rear who is very
6 supportive of the program, so we didn't have any
7 strong opinions about or strong objections to this
8 program being located in that part of the
9 neighborhood. It is at the periphery of the
10 neighborhood. Like I said, the church owns other
11 properties more interior to the residential area, but,
12 in this instance, we do not feel there would be any
13 strong impacts to the community.

14 CHAIRPERSON GRIFFIS: Any other questions
15 from the Board? Does the applicant have any cross
16 examination of the Office of Planning? Any questions?

17 MR. BUSH: No, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Does the ANC have
19 any cross? Very well. Thank you very much. We
20 appreciate that. We will note that it is Exhibit No.
21 21. At this point then, I don't have any other
22 attendant Government agencies responding to this
23 application. We can have the ANC come forward and
24 present their analysis and motion. Good morning.

25 MS. ROBINSON: Good morning. My name is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Naomi Robinson, ANC-7E01. I'm the Chairperson of the
2 ANC-7E. On February the 14th, we had our regular
3 scheduled community meeting at Jones Memorial Church,
4 4625 G Street, S.E., in Washington, D.C. at 7:00 p.m.
5 On the agenda on the Board of Zoning Application
6 17458, for Johnson Memorial Baptist Church located in
7 Washington, D.C., that pursuant to section 3104.1, to
8 seek a special exception to allow the use of the
9 existing building to have Sunday school classes and a
10 computer training program.

11 At that meeting, Attorney Nathaniel Bush,
12 a resident living within the ANC-7E boundaries,
13 represented Johnson Memorial Baptist Church. Notices
14 were mailed out to residents living in ANC-7E01,
15 Washington Heights Community Development Organization
16 and Corporation, news letters were sent out to East of
17 the River newspaper, flyers were distributed
18 throughout the community.

19 ANC-7E has seven Commissioners, five were
20 present at this meeting, ANC-7E01, 7E02, 7E03, 7E05
21 and 7E06, four constitutes a quorum. The
22 Commissioners nor the community had any issues against
23 the application. All were pleased to have a learning
24 center in our community. Recommendation was to vote
25 and approve the application as it was presented. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 vote on the motion to adopt the report to the Board
2 was 5-0. The name of person authorized to present
3 this report is ANC-7E01 Naomi Robinson, that's the
4 Chairperson.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much, Ms. Robinson. Does the Board Members
7 have any questions of Ms. Robinson? Does the
8 applicant have any cross examination of the ANC?

9 MR. BUSH: No cross examination, Mr.
10 Chairman, but I would like to extend Johnson's
11 appreciation for the recommendation.

12 CHAIRPERSON GRIFFIS: Indeed, indeed.
13 Yes, and we thank you for coming to personally present
14 it to the Board. It was very important and it,
15 obviously, meets all of our requirements to be given
16 the great weight of which we will now afford it. It's
17 Exhibit No. 20 in the file.

18 At this point, if there's nothing further,
19 questions for Ms. Robinson from the Board, we thank
20 you very much then. Let's move ahead then and I will
21 ask any persons present in support of Application
22 17458 to come forward at this time. Any person to
23 provide testimony in support? Any persons to provide
24 testimony in opposition to Application 17458? Yes?
25 Now, is your time.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Of course, in this case and in all cases
2 this morning, persons are afforded three minutes. I
3 will watch the clock myself, so we don't turn it on.
4 You just note that I may interrupt you as you get
5 close to that time. With that, I'll just have you
6 state your name and address for the record and you can
7 proceed.

8 MS. WINGFIELD: Yes, my name is Karen
9 Wingfield. I live at 744 Ridge Road, S.E., which is
10 the adjacent property to 746. And I just have a brief
11 statement that I would like to read to the Board, if
12 I may?

13 CHAIRPERSON GRIFFIS: Sure.

14 MS. WINGFIELD: Johnson Memorial Baptist
15 Church, Application 17458, is seeking a special
16 exception to use an existing building for church
17 programs. Johnson Memorial Baptist Church owns the
18 property at issue located at 746. It has been using
19 the property at issue for church programs for the last
20 couple of years. I am the owner of 744 Ridge Road,
21 S.E., the adjoining property.

22 Both properties currently are zoned R-2
23 for residential semi-detached dwellings. While I
24 purchased the dwelling at 744, the dwelling at 746 was
25 owned by a family using the dwelling as it was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 intended and the Zoning Regulation Maps. As you know,
2 the church programs in an R-2 dwelling is permitted
3 only if it is not objectionable in the resident's
4 district because of noise or traffic.

5 The applicant in this case has the burden
6 of demonstrating that the proposed special exception
7 will not have an adverse effect to neighboring
8 property by increasing the level of noise, traffic,
9 number of users of the property or cause other
10 detrimental conditions.

11 Additionally, the Board may only grant a
12 special exception where it will be in harmony with the
13 general purpose and intent of the Zoning Regulation
14 and Zoning Maps and does not adversely affect the use
15 of neighboring property. The level of noise will
16 increase for the proposed special exception adversely
17 affecting the neighboring property, in particular 744
18 Ridge Road, S.E.

19 Since Johnson Memorial Baptist Church
20 began using the property at issue, the amount of uses
21 of the dwelling has increased dramatically. Because
22 of the intimate nature of the property, semi-detached
23 dwellings, each dwelling shares a common wall. With
24 the increase in number of uses of the property, the
25 noise level in the dwelling at times reaches levels

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that can be heard through the common wall and disturbs
2 our quiet enjoyment of our property.

3 Therefore, the increased level of noise
4 caused by the proposed special exception will
5 adversely affect the neighboring property, in
6 particular 744 Ridge Road, S.E. As a result of the
7 proposed special exception, the amount of traffic will
8 increase as well. In particular, the limited parking
9 will become scarcer. The neighboring property accepts
10 that on Sundays and occasionally during the week when
11 there is a program at Johnson Memorial Baptist Church,
12 parking in front of the neighboring property will be
13 limited.

14 However, with the granted special
15 exception, parking will be limited more often as
16 Johnson Memorial Baptist Church offers more programs.
17 Therefore, the amount of traffic will increase if the
18 proposed special exception is granted. The proposed
19 special exception also will cause detrimental
20 condition to the neighboring property. With Johnson
21 Memorial offering church-related programs at the
22 property at issue, the weekly trash stored at the
23 property at issue consistently has surpassed the
24 capacity of the trash bins located at the property,
25 thus leaving trash uncovered and strewn across the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 yard.

2 The trash creates an extremely foul odor
3 that attracts rodents, stray domestic animals and
4 opossums from the national park across the street
5 adversely affecting the public health of the
6 neighboring property. Furthermore, the sight of trash
7 strewn across the yard diminishes the aesthetics of
8 the neighborhood. Therefore, the special -- the
9 proposed, excuse me, special exception will cause
10 detrimental conditions to arrive to neighboring
11 property.

12 Johnson Memorial Baptist Church cannot
13 meet its burden of proof that the special exception
14 will not have an adverse effect on neighboring
15 property. The level of noise and traffic will
16 increase and the amount of available parking spaces
17 will lessen, because more people will use the property
18 on a continuous basis than intended other residential
19 units.

20 Furthermore, it is likely that the amount
21 of trash stored at 746 threatens the public health of
22 the neighboring property. Moreover, granting Johnson
23 Memorial Baptist Church's application for the special
24 exception will deviate from the intended purpose and
25 use for the property. Such deviation will impact the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 quiet enjoyment of the neighboring property.
2 Therefore, Johnson Memorial Church cannot meet its
3 burden of proving no adverse effect on neighboring
4 property.

5 Because Johnson Memorial Baptist Church
6 cannot meet its burden, I respectfully request that
7 the Board deny its application for a special
8 exception. However, if the special exception is
9 granted, I respectfully ask that it be conditioned on
10 the majority of church members parking available
11 spaces not in front of the residential dwellings on
12 Ridge Road.

13 There is adequate parking for church
14 members from the front of Johnson Memorial Baptist
15 Church to further up Ridge Road near the recreation
16 center. Otherwise, the other property owners will be
17 forced to park farther away from their homes
18 increasing the possibility of theft to their person
19 and their automobiles.

20 Additionally, I request that any special
21 exception to be conditioned on Johnson Memorial
22 Baptist Church providing adequate trash storage and
23 pickup for the property at issue to alleviate the
24 concerns caused from the huge amounts of trash. Thank
25 you for your time and consideration. Respectfully,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Karen H. Wingfield, resident.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you very much, Ms. Wingfield. We would appreciate it
4 if you had copies of that to put into the record.

5 MS. WINGFIELD: Yes, I have copies.

6 CHAIRPERSON GRIFFIS: That would be
7 perfect. A couple of quick questions. First of all,
8 from my understanding, Ridge Road, is there parking on
9 both sides of Ridge Road?

10 MS. WINGFIELD: There is parking on both
11 sides of Ridge Road. As explained before, we are
12 across from Fort Dupont Park.

13 CHAIRPERSON GRIFFIS: Right. Okay.

14 MS. WINGFIELD: Okay. So, of course,
15 there is no houses there.

16 CHAIRPERSON GRIFFIS: Good. And your
17 concern, just from my understanding, of the parking is
18 for all the church events? Is that my understanding?

19 MS. WINGFIELD: Heretofore, the residents
20 or the neighbors on Ridge Road, we have taken into
21 consideration that is a church and they do have church
22 functions, such as funerals.

23 CHAIRPERSON GRIFFIS: Correct.

24 MS. WINGFIELD: And we have not made any
25 real verbal complaint, but I just want to point out

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that this is occasionally, but if they have some
2 certain programs like the computer training, this
3 could be an every day occurrence where neighbors would
4 not be able to park in front of their --

5 CHAIRPERSON GRIFFIS: I see, yes.

6 MS. WINGFIELD: -- residence.

7 CHAIRPERSON GRIFFIS: And I think that is
8 a reasonable position to have. In terms of noise,
9 what noise have you heard currently or are you
10 anticipating that with the computer training that it
11 would create the noise?

12 MS. WINGFIELD: Well, on any Sunday
13 morning when they do have the Sunday school classes
14 there, if I'm not attending my own church, you can
15 basically hear people going up and down the steps
16 constantly during the time that they are having the
17 program over there. My concern is what will happen on
18 a normal weekday or say in a few years when I retire
19 from my current employment and I'm home on a more
20 regular basis, will I be confronted with noise all day
21 long?

22 CHAIRPERSON GRIFFIS: Right. Okay.
23 Excellent. Other questions? Mr. Etherly?

24 BOARD MEMBER ETHERLY: Thank you very
25 much, Mr. Chair. Let me take this opportunity to say

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hello to you, Ms. Wingfield and I'll also note --

2 MS. WINGFIELD: Mr. Etherly.

3 BOARD MEMBER ETHERLY: -- in the case of
4 full disclosure, that's -- Ms. Wingfield happens to be
5 my former math teacher when I was a student at Ballou
6 Senior High School, so this is an opportunity to give
7 back as much as I took during those wonderful years
8 with you, Ms. Wingfield. But in all seriousness, I do
9 make that disclosure just for the benefit of the
10 applicant and the benefit of my colleagues, but do not
11 find any obstacle to my ability to remain on the case.

12 CHAIRPERSON GRIFFIS: Mr. Bush, do you
13 have any opposition to Mr. Etherly continuing on this
14 case?

15 MR. BUSH: No, Mr. Chairman, but let me
16 say, if you'll permit me a moment to simply say this
17 that Johnson wants to be a good neighbor.

18 CHAIRPERSON GRIFFIS: Okay. I'm going to
19 let you respond, but we're going to get through all
20 the questions.

21 MR. BUSH: Okay.

22 CHAIRPERSON GRIFFIS: And then I'll give
23 you an opportunity at the end. Mr. Etherly, did you
24 have any questions or follow-up?

25 BOARD MEMBER ETHERLY: Sure, just a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 follow-up. With respect to the issue, Ms. Wingfield,
2 of the noise that you commented, because it is a semi-
3 detached structure you do, of course, deal with that
4 just as in the regular course of traditional
5 occupancy.

6 Would you describe the noise or any of the
7 issues that you have encountered to rise above the
8 level of what you would encounter if you had a family
9 living in that adjacent property?

10 MS. WINGFIELD: Well, I'm just thinking
11 that if you're there all day long and you're doing
12 some kind of educational whatever that there will be
13 noise because of -- it will be more than just noise,
14 someone having a conversation or the TV just, you
15 know, playing a little loud. It will be a little bit
16 more than that because any time you bring in more
17 occupants than would normally be considered in a home,
18 that would raise the level of noise.

19 BOARD MEMBER ETHERLY: Okay.

20 MS. WINGFIELD: So that was my concern
21 about the noise level.

22 BOARD MEMBER ETHERLY: Okay. And with
23 respect to trash and refuse pickup, and I will flag
24 this for you, Mr. Bush, because I would like to get
25 some feedback on how often those collections will be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 handled if the operation were to go forward with an
2 approval, what type of collection do you have
3 currently in that location, Mrs. Wingfield, in terms
4 of --

5 MS. WINGFIELD: Oh.

6 BOARD MEMBER ETHERLY: -- your refuse?

7 MS. WINGFIELD: Oh, my refuse is picked up
8 by the city on Wednesdays.

9 BOARD MEMBER ETHERLY: Okay. So it's just
10 once a week?

11 MS. WINGFIELD: One day, one day a week,
12 but we have the big supercans.

13 BOARD MEMBER ETHERLY: Okay.

14 MS. WINGFIELD: And the -- what is it, for
15 the recyclables, we have both of those.

16 BOARD MEMBER ETHERLY: Okay. And so that
17 is done curbside?

18 MS. WINGFIELD: In the alley.

19 BOARD MEMBER ETHERLY: In the alley at the
20 rear of the property?

21 MS. WINGFIELD: There is an alley between
22 -- it's the Ridge Road and the properties on Adrian
23 Street.

24 BOARD MEMBER ETHERLY: Okay. Has it been
25 your experience that you have observed -- you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 indicated this in your testimony, but I just want to
2 be sure I'm clear in understanding it. It has been
3 your experience that you have absorbed more trash
4 stored at the rear of the subject property since it
5 has been in operation to an extent?

6 MS. WINGFIELD: Since it's been in
7 operation as a church? Well, since the church has had
8 that adjacent property there has been more trash
9 stored there than they have containers to place the
10 trash in.

11 BOARD MEMBER ETHERLY: To match. Okay.

12 MS. WINGFIELD: So periodically the trash
13 is -- well, I won't say periodically because that
14 sounds like every once in awhile. Most of the time
15 the trash is more than which can be contained in the
16 containers. So, therefore, it is overflowing and
17 animals have been noted to go through the trash and
18 it's unsightly and it's a little discerning. Early in
19 the morning you're drinking your tea or whatever and
20 you're looking out and --

21 BOARD MEMBER ETHERLY: Okay.

22 MS. WINGFIELD: -- animals are going
23 through the trash.

24 BOARD MEMBER ETHERLY: Excellent. Okay.

25 Thank you very much, Mr. Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Good.

2 BOARD MEMBER ETHERLY: I don't have any
3 further questions.

4 CHAIRPERSON GRIFFIS: Thank you, Mr.
5 Etherly. Others? Ms. Miller?

6 VICE CHAIR MILLER: Yes. I wanted to ask
7 you if you could just elaborate a little more on -- I
8 think you said that other than the trash, that there
9 were adverse impacts that you have experienced already
10 from church activities in the building.

11 Can you elaborate as to, you know, what
12 activities and what were the specific adverse impacts
13 you have been experiencing?

14 MS. WINGFIELD: Well, the only thing that
15 I'm really concerned about that has occurred is the
16 Sunday school programs, but they have been doing that
17 for awhile and, generally, I can say it's just the
18 noise from, you know, going up and down the steps and
19 people -- and more people using the property.

20 VICE CHAIR MILLER: On the outside?

21 MS. WINGFIELD: No.

22 VICE CHAIR MILLER: Is that what you mean?

23 MS. WINGFIELD: No, generally I'm talking
24 about the inside.

25 VICE CHAIR MILLER: You can hear the noise

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of what's going on on the inside?

2 MS. WINGFIELD: Now, see, in a semi-
3 detached home the walls are not -- you know, they are
4 rather thin and you can hear conversations and you can
5 hear people up and down the stairs and that has been
6 my concern. My concern is, okay, I have not said
7 anything about it because generally this only occurs
8 on Sunday mornings.

9 I'm wondering with the increase in church-
10 related activities, would this mean more noise? Would
11 this mean all day long at times when maybe I would
12 appreciate, you know, some quiet in my home? That's
13 what I'm opposing to because my opposition really is
14 to that type of noise.

15 VICE CHAIR MILLER: Do you have an idea
16 about the number of the people in the house, you know,
17 in the Sunday school classes that is cause -- so that
18 you can hear it? I mean, if we're looking at limiting
19 numbers or anything like that, I would want to know,
20 you know, how many people are in it that's bothering
21 you. Is it 40 kids or is it, you know, do you know?

22 MS. WINGFIELD: Generally, on Sunday
23 mornings at the time they are holding Sunday school
24 class, I am leaving my property to go to my own
25 church. I see quite a number of adults and children

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 coming into the property.

2 However, if I'm late leaving for my
3 church, I can hear the children and apparently they
4 must be upstairs or I can hear people going up and
5 down the steps at the property. I can hear people
6 talking. But as far as to say the whole Sunday how
7 many people are in the home, in the house, I really
8 could not say, but I can say there is more than five
9 or six people.

10 VICE CHAIR MILLER: And did you live next
11 door when there was a family living in the building?

12 MS. WINGFIELD: Yes, I did.

13 VICE CHAIR MILLER: And so there was a big
14 difference?

15 MS. WINGFIELD: There is a big difference.

16 VICE CHAIR MILLER: Could you hear the
17 family?

18 MS. WINGFIELD: I could hear the family on
19 occasions and I'm sure they could hear my family on
20 occasion. But, see, currently I am home alone, my
21 husband and I, so we have no, you know, children in
22 the house. So we're used to, you know, a certain
23 amount of quiet. So that's -- my whole concern is
24 what will this all entail if they increase the amount
25 of activities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR MILLER: Okay. And with
2 respect to the parking, I heard you to say that you
3 wouldn't want them to park in front of the residences.
4 Did you identify a place where you suggested they
5 should park?

6 MS. WINGFIELD: Yes, there is plenty of
7 parking across the street, because I said we're across
8 the street from the park.

9 VICE CHAIR MILLER: From the park. Okay.

10 MS. WINGFIELD: Okay. And there is plenty
11 and there are plenty of places from where their church
12 -- where the church begins at 800 Ridge Road going
13 further up the street toward the recreation center
14 there. And so there is plenty of parking on that
15 street, yes.

16 VICE CHAIR MILLER: And were you referring
17 to staff or were you referring to visitors?

18 MS. WINGFIELD: Well, I'm referring to
19 basically on -- you know, anytime you have a program.
20 Generally, if they have a program or if any -- let's
21 say any kind of -- like they have been fixing, you
22 know, certain parts of the property. Well, when I
23 come home I have to park further down Ridge Road
24 because the persons have parked in front of my home or
25 when I come in in the evening, if there is any kind of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meeting at the church, then I have to park further
2 down the street. Okay.

3 You know, certain inconveniences I'm
4 willing to accept, but I have had occasions when I was
5 asked to move my vehicle from in front of my residence
6 because of some church program occurring and I was not
7 extremely happy, but I complied because I realize it's
8 a church and they are trying to, you know, do business
9 for the Lord, so I complied. But I'm just wondering
10 is this going to be an ongoing thing where I'm going
11 to have to be aware of what is going on in the
12 building and park somewhere else.

13 VICE CHAIR MILLER: And you don't have a
14 driveway. Is that correct?

15 MS. WINGFIELD: My -- we do have a
16 driveway in the back where only one car parks there
17 and my husband generally parks in that space, so I
18 generally park on Ridge Road.

19 VICE CHAIR MILLER: Okay. My last
20 question is did you talk to Office of Planning about
21 your concerns?

22 MS. WINGFIELD: No, I didn't. To tell the
23 truth, when I got the letter being that I'm just a
24 resident and I have never had any such letter come to
25 my house, I didn't even know where to, you know, start

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the process. But once I started the process, I
2 realized there were a lot of avenues that I could have
3 looked into and after being here today I found out
4 more information that will help me, I'm sure, in the
5 future.

6 VICE CHAIR MILLER: Okay. Thank you very
7 much.

8 MS. WINGFIELD: Thank you.

9 CHAIRPERSON GRIFFIS: Excellent. Any
10 other questions from the Board? Yes?

11 COMMISSIONER JEFFRIES: Just a quick
12 question. Ms. Wingfield, so the church never got in
13 contact with you about its plans?

14 MS. WINGFIELD: Apparently not. You know,
15 they mentioned about a petitionary thing. Apparently,
16 I was unaware of it. Not to say that they didn't do
17 whatever or that they didn't try to contact us, but
18 apparently me personally, I was unaware of anything
19 that was really going on until I got the notice in the
20 mail.

21 And at first I was like what does this
22 really mean? After looking up some of the
23 information, I realized that this may have a greater
24 impact on me than at first, you know, glance of the
25 letter.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER JEFFRIES: And my other
2 question is you mentioned that, you know, if the Board
3 should go forward and grant the special exception that
4 you would, you know, want there to be a condition
5 around parking.

6 Are there any other conditions that you
7 might, you know, think would be more in keeping with
8 you living next door that you can think of?

9 MS. WINGFIELD: The other condition is
10 about the trash.

11 COMMISSIONER JEFFRIES: Just the trash?

12 MS. WINGFIELD: The trash.

13 COMMISSIONER JEFFRIES: Okay.

14 MS. WINGFIELD: The trash needs to --
15 because, as I said, you know, we have animals visiting
16 that probably wouldn't be visiting otherwise.

17 COMMISSIONER JEFFRIES: Okay. But no
18 other sort of use conditions, I mean, in terms of so
19 many days a week or any of that?

20 MS. WINGFIELD: Well, see, I'm hoping that
21 it's not every day, all day, and I heard that they
22 could use up to 9:00 p.m. in the evening and that's
23 definitely, you know, going to impact on my time using
24 my living space.

25 COMMISSIONER JEFFRIES: Okay. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Thank you very much,
2 Mr. Jeffries. Any other questions from the Board?
3 Very well. Of course, it is an important aspect, too,
4 as the Office of Zoning takes in all its hearing is to
5 provide those letters for notice, so that you are
6 aware and also we have the secondary, which is the
7 placards, the large Halloween colored piece posted on
8 the front of the properties.

9 MS. WINGFIELD: Yes.

10 CHAIRPERSON GRIFFIS: Mr. Bush, cross of--

11 MR. BUSH: Well, if I may be able to allow
12 a cross in the form of making comments with regards to
13 the statements that have been made.

14 CHAIRPERSON GRIFFIS: That's fine. I
15 think it would be appropriate for you to go right into
16 your closings if you would then. If there aren't any
17 other persons present to provide testimony in this
18 application, I think we would be ready for that.

19 MR. BUSH: Well, thank you, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Let me just say a
21 very good afternoon and thank you, Ms. Wingfield, for
22 being here. We do appreciate you providing testimony.
23 As I say, we'll look for that in written form in the
24 record, if you can leave a copy behind and also
25 provide Mr. Bush and the ANC a copy. Yes?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BUSH: Thank you, Mr. Chairman. Let
2 me also join with the Board in thanking Ms. Wingfield
3 for making her presentation, because she has brought
4 to my attention and I should say to the church
5 attention some legitimate concerns which we need to
6 address, and we are willing and committed to doing
7 that.

8 Johnson, as I had indicated earlier, Mr.
9 Chairman and Members of the Board, wants to be a good
10 neighbor and many of the activities that we are
11 engaged in in and around the church are of benefit to
12 the entire community, so that we regret the fact that
13 some of our activities might have adversely impacted
14 on Ms. Wingfield. But at that same time, the specific
15 issues that she has raised concerning trash,
16 concerning noise, etcetera, I believe that we can
17 address those and ameliorate them.

18 There has been some construction and
19 changes, repairs work that has gone on in that
20 building and, as a result, from time to time there has
21 been an accumulation of refuse in the back. We
22 thought that we were taking care of it in a timely
23 fashion. It is the tradition of the community, of the
24 Government, to only give you one can for our
25 neighborhood. We have one large can. We can purchase

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 another can to put back there, so that we make sure
2 that any and all of the refuse can go into that, the
3 trash.

4 And in addition to that, if necessary, we
5 can make sure that we would have a regular and
6 additional pickup of any trash in and around the
7 community which may adversely impact on Ms. Wingfield.
8 And let me say that in all candor, because we have
9 talked to a great number of people in the community
10 all down the Ridge Road, Texas Avenue, etcetera, and
11 our response has been somewhat different. The
12 response that we have received has been somewhat
13 different than the legitimate concerns that Ms.
14 Wingfield has raised.

15 And I can say we are prepared to address
16 that. If there is adverse noise, we will be prepared
17 to do that. But keep in mind, if I may say this to
18 the Board, that we are only talking about a period
19 from about 9:30 to about 10:45 so far as the Sunday
20 school programs would be concerned. And, you know,
21 the reality is that when you live in an attached
22 house, you know, there are consequences that flow from
23 that.

24 Tactfully, Mr. Etherly had addressed to
25 that and I'm not saying that in the sense of saying

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that we are not prepared to do everything that we must
2 do, not so much because we want to address Mrs.
3 Wingfield's concerns, because we do, but more so
4 because we want to be a good neighbor. I mean, we're
5 there to help and to serve our community and,
6 certainly, we have neighborhoods right next door to us
7 that have some concerns and we need to do that.

8 And, Mr. Jeffries, point well-taken and we
9 are prepared to do all that we can. If we have to put
10 carpet on the steps to quiet the up and down, going up
11 and down, fine. Also keep in mind that it relates to
12 the -- as it relates to the computer program, the
13 computer program is a program that is going to be in
14 the basement. That is where the computer program will
15 be housed, on the basement level, and it will be
16 operated, although we do not know the exact times it's
17 going to be operated now.

18 Also, I would ask the Board to keep in
19 mind that we're talking about very few students that
20 will be involved in that computer program. That isn't
21 to say that we do not have to be vigilant to make sure
22 that we maintain some control over noise, etcetera,
23 which we are committed to do.

24 And in addition to that, and I had said
25 this earlier to Ms. Wingfield, my recommendation to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the church is going to be that when we start planning
2 the specifics that we include Ms. Wingfield in it,
3 because we want to be a good neighbor. I mean, we
4 want to be a good neighbor.

5 So, obviously, there -- parking is always
6 an issue in our community. But, interestingly enough,
7 it is less of an issue on Ridge Road because we have
8 almost a quarter of a mile of unrestricted parking on
9 the south side of Ridge Road. I know that because I
10 jog there, that section of Ridge Road, and I have
11 measured the distance. And so we will do everything
12 that we can to address whatever specific concerns have
13 been raised here by our neighbor, Ms. Wingfield.

14 CHAIRPERSON GRIFFIS: Excellent. Quick
15 question before you go to your final finals, Mr. Bush.
16 The church proper has commercial trash hauling?

17 MR. BUSH: I can't -- the chairman of our
18 deacon board says we do.

19 CHAIRPERSON GRIFFIS: And, however, this
20 house doesn't? It has relied on the District trash?

21 MR. BUSH: No.

22 CHAIRPERSON GRIFFIS: Okay. So you
23 already have a commercial of which you can get your
24 scheduling and in terms of -- so in terms of getting--
25 I guess I misinterpreted your indication of getting an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 extra container.

2 And then in terms of the anticipated
3 program times for the computer training that would
4 happen primarily in the basement for up to 20 adults,
5 what is the anticipated time? Is this all evening?
6 Is it some day, some evening?

7 MR. BUSH: Okay. I'm sorry, Mr. Chairman.

8 CHAIRPERSON GRIFFIS: That's fine.

9 MR. BUSH: Mr. Chairman, I was listening
10 to Mr. Johnson, the chairman of our deacon board and
11 also head of the Ministries of Hope Program within our
12 church. It's -- we have asked for up to 20 students,
13 but the reality is that we anticipate serving no more
14 than 9 or 10.

15 CHAIRPERSON GRIFFIS: Sure, sure.

16 MR. BUSH: The reason that I made the
17 larger request was because we don't -- we want to have
18 some flexibility for future possibilities, but we do
19 not anticipate more than 9 or 10 who will actually be
20 served in the community. They are going to be in the
21 basement where we will actually have the computers,
22 etcetera, set up.

23 CHAIRPERSON GRIFFIS: And the anticipated
24 timing?

25 MR. BUSH: Beg your pardon?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: The timing of those
2 classes?

3 MR. BUSH: We have not discussed that yet.
4 Okay.

5 MR. JOHNSON: Between 10:00 and 3:00,
6 10:00 in the morning and 3:00 in the afternoon.

7 MR. BUSH: I'm sorry, Mr. Chairman, if I
8 may add to that.

9 CHAIRPERSON GRIFFIS: That's all right.

10 MR. BUSH: It's my understanding that the
11 program will operate in the daytime from 10:00 in the
12 morning to 3:00 in the afternoon for the record.

13 VICE CHAIR MILLER: Weekdays?

14 MR. BUSH: That's correct, my
15 understanding.

16 CHAIRPERSON GRIFFIS: But there is the
17 aspect or the discussion of until 9:00 p.m.

18 MR. BUSH: Well, yes. And let me say that
19 in my discussion with the Planning Office, I wanted to
20 provide as much flexibility as possible for
21 consideration of this request and I did inform them
22 that we would like to have the option to operate the
23 programs as late as that time.

24 But the caveat that was added there was
25 that's the approximate time that the existing programs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in the church would actually end when we have those
2 programs. For example, we have a Bible study class
3 that takes place on Wednesdays in the evening and it
4 does not run any later than 9:00. So I simply
5 informed the Planning Office that the program would
6 not run any later than 9:00, because none of our
7 programs run later than 9:00.

8 CHAIRPERSON GRIFFIS: Okay. Good. I will
9 give you an opportunity for any last brief closings
10 that you might have.

11 MR. BUSH: Well, just very briefly, Mr.
12 Chairman and Members of the Board. The request of
13 Johnson Memorial for the special exception is, indeed,
14 to try to provide an opportunity to better serve the
15 community that Johnson resides in. We are committed
16 to trying to make a difference and we want to do all
17 that we can, to use whatever resources that we have to
18 benefit the community that we live in.

19 We will do everything that is necessary in
20 order to try to make our existence there so far as
21 these programs that we are requesting the exception
22 for to be of such a nature as to be acceptable to the
23 entire community, particularly to our most immediate
24 neighbors.

25 We have a desire to serve, to serve God

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and to serve our greater community, and we are
2 committed to doing that and we believe that this
3 program that we are requesting the special exception
4 for will allow us to do both. And it is our hope and
5 indeed our request that this Board will approve the
6 recommendation of the Planning Office and accept the
7 application of Johnson. Thank you very much.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much, Mr. Bush. We do appreciate it and all
10 those, the ANC of course and Ms. Wingfield, for
11 presenting all this important testimony and evidence
12 into the record. Of course, we're not sitting in
13 judgment of the program and its substance or even the
14 church, but rather these limited zoning issues.

15 MR. BUSH: Certainly.

16 CHAIRPERSON GRIFFIS: Of course, which I
17 have outlined. I think it's important for us to set
18 this for a decision as quickly as possible and that
19 would be at our May 2nd decision making. That would
20 be set on our schedule for our already scheduled
21 Public Meeting. At that time, of course, we're going
22 to call this for deliberation.

23 I think we need some additional
24 information in the record as, Mr. Bush, you have
25 already volunteered to put it in. I would like to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have it in the record by close of business next
2 Tuesday. That would be at 3:00 into the Office of
3 Zoning. And as I understand at this point, and I will
4 hear from others, I think it would be appropriate for
5 you to indicate how you are going to address the trash
6 pickup. That will just be a simple sketch. Of
7 course, we would look at that.

8 I think it would be important also to look
9 at, as we break this down, the three elements of what
10 this house is going to be used for and the program
11 that is anticipated. Of course, that will be
12 specifically what the Board is looking at in this
13 deliberation.

14 So Sunday school, of course, church
15 programs and then the training, the computer training,
16 knowing full well that you're going to put in some
17 flexibility because you're defining the programs. But
18 it's important for you to understand and for the
19 Board's understanding to have that before us.

20 Unless it changes, we have the numbers or
21 participants. 20 and 40 has been talked about for the
22 Sunday school and the training. The other point --
23 oh, I think the noise is an interesting position based
24 on the fact that this is a different type of density
25 and use for an attached building. I think carpeting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on the stairs is an excellent suggestion.

2 Any other suggestions that you might be
3 availing yourself to would be appropriate in how you
4 are dealing with the noise and the impact, even to a
5 wall covering of some sort or how maybe even the house
6 is going to be laid out with, you know, the
7 bookshelves on the common wall or whatever other kind
8 of noise deadening that might be impacted.

9 It was an important point that you brought
10 up that the basement would be utilized for the
11 computer training and I think that wasn't clear. If
12 it was stated in here, I didn't see that in the
13 written submissions.

14 MR. BUSH: I don't think it was.

15 CHAIRPERSON GRIFFIS: Others? Yes, Ms.
16 Miller?

17 VICE CHAIR MILLER: I just want to throw
18 out the suggestion that the submittal be somewhat in
19 the form of proposed conditions building on what the
20 Chairman was saying, which would identify the hours of
21 operation, the days of operation, the steps you would
22 take to mitigate noise such as carpet, the trash,
23 parking specifically.

24 And I think that Mr. Bush said that, you
25 know, when it got going later down the road that they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 intended, you intended, to talk with Ms. Wingfield
2 about the specifics. And I think it would be a good
3 idea personally if you talk now about these kind of
4 conditions, so that if you can come up with conditions
5 that will mitigate her concerns now, the Board would
6 feel -- I would feel more comfortable that the
7 operation would not be causing an adverse impact on
8 your neighbor.

9 MR. BUSH: Well, let me be clear on this
10 if I may. Are you saying then that if we are to
11 submit these items that we would like to address as
12 conditions of approval, and then you're suggesting
13 that I talk with Ms. Wingfield to get an agreement on
14 her concerns about the specific conditions, in effect
15 what you are saying is that you're allowing Ms.
16 Wingfield and the addressing of her specific
17 conditions to be -- to determine whether or not the
18 matter is going to be approved?

19 VICE CHAIR MILLER: No, I'm not saying
20 that. I'm not saying that. I'm saying I think it's
21 a good idea to talk to her about it. For instance, if
22 Ms. Wingfield had an objection to something and the
23 Board didn't think that was a reasonable objection,
24 they wouldn't go along with that objection.

25 But what I am saying is, for instance, if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there is a parking issue and you talk to Ms. Wingfield
2 and you work it out and then it's no longer an issue
3 for her, then the Board knows that there is no
4 problems in the community at all with that issue.

5 You know, okay, this issue is taken care
6 of. The noise issue was taken care of by the
7 carpeting. And then maybe there is one issue that,
8 you know, you can't agree on, you know, and then the
9 Board looks at that and decides was it a real adverse
10 impact or not really, you know?

11 MR. BUSH: If I may, Mr. Chairman, just a
12 comment. So far as the program is concerned, we have
13 dedicated at least parking spaces on the lot of the
14 church to comply with the requirements for use that is
15 actually going to exist there but, you know --

16 CHAIRPERSON GRIFFIS: Well, I think that's
17 an excellent example --

18 VICE CHAIR MILLER: Exactly.

19 CHAIRPERSON GRIFFIS: -- of what Ms.
20 Miller is saying, is that just state it out.
21 Obviously, parking has been brought up as an
22 objectionable condition and the Board needs to assess
23 all of the information. You're saying you're
24 providing it on-site for that which is required for
25 the number of staff in the building. We need all that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 before us and then we can move ahead.

2 MR. BUSH: And if I just may, Mr.
3 Chairman.

4 CHAIRPERSON GRIFFIS: Sure.

5 MR. BUSH: More specifically, Ms.
6 Wingfield's concern was that she cannot park in front
7 of her house.

8 CHAIRPERSON GRIFFIS: Understood,
9 understood.

10 MR. BUSH: And the reality is that there
11 are a number of other people that are on that block
12 who may or may not be parking in front of Ms.
13 Wingfield's house.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. BUSH: And not necessarily --

16 CHAIRPERSON GRIFFIS: And I appreciate you
17 bringing that up. Believe me, the Board has an
18 amazing amount of familiarity with that issue.

19 MR. BUSH: I imagine you have.

20 CHAIRPERSON GRIFFIS: And not necessarily
21 just in these particular cases.

22 MR. BUSH: Yes.

23 CHAIRPERSON GRIFFIS: And you need to
24 trust that we'll be able to make a rational judgment
25 on all of those elements.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BUSH: But we will be very happy to do
2 whatever is necessary, too.

3 CHAIRPERSON GRIFFIS: Good.

4 VICE CHAIR MILLER: And also, I just want
5 to say with respect to that parking example, if you
6 say parking as a condition or as an element of the
7 program, parking will be in this lot --

8 MR. BUSH: Yes.

9 VICE CHAIR MILLER: -- it's also helpful,
10 I find it helpful sometimes, as an aside if you want
11 to say why you think that satisfies, you know --

12 MR. BUSH: I understand.

13 VICE CHAIR MILLER: -- the concerns or the
14 situation. Then we have the information to evaluate
15 that condition.

16 MR. BUSH: Point well-taken. We'll
17 certainly do that.

18 VICE CHAIR MILLER: Thank you.

19 CHAIRPERSON GRIFFIS: Good. Anything else
20 then?

21 MR. BUSH: No.

22 CHAIRPERSON GRIFFIS: Very well. Ms.
23 Bailey will assess or rather summarize the schedule
24 and the submissions just to make it clear.

25 MS. BAILEY: Mr. Chairman, you indicated

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that the Board will be making a decision on May 2nd
2 and the items that you asked for are to be in next
3 Tuesday and the date of next Tuesday is April 25th.

4 The items that I have listed that you have
5 requested, and please feel free to help me as I go
6 along, the applicant is to address how trash is to be
7 picked up at the site or how trash is being disposed
8 of, if a commercial business is going to be picking up
9 trash and so forth from this particular location, the
10 three elements that's anticipated in the application
11 for the site, for the use of the site, that being the
12 Sunday school, the training program and other church
13 programs.

14 He is also to address noise and how it is
15 to be buffered, will carpeting be used on the steps,
16 I think you mentioned a bookshelf or something like
17 that, how the basement is to be used, is to be used
18 for the computer training program. That is to be
19 submitted in writing.

20 Ms. Miller articulated that this is to be
21 in the form of proposed conditions. The applicant is
22 to talk to Mrs. Wingfield about the specifics of, as
23 you have discussed it here today, the hours of
24 operation and also parking, how it is to be addressed.
25 Those were the things that I have, sir.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you very much. I think that's fairly clear, all the
3 elements that we're looking to address. Of course,
4 the record will be kept open. I don't anticipate --
5 well, there it is. I think just for those elements
6 and the applicant's submission. Of course, that
7 should be provided to the ANC also. If there's any
8 other actions of the ANC, we would take that under
9 advisement. I wouldn't anticipate that unless the ANC
10 is aware that they might.

11 Other than that then, Mr. Bush, clear on
12 the filing schedule?

13 MR. BUSH: Yes, I am, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you very much.

16 MR. BUSH: Thank you. Thank you, Members
17 of the Board.

18 CHAIRPERSON GRIFFIS: The ANC, it has been
19 an absolute pleasure. Thank you very much and let us
20 move ahead then to the next case in the morning.

21 MS. BAILEY: Application No. 17456 of
22 Jubilee Housing Incorporated, pursuant to 11 DCMR
23 section 3103.2, for a variance from the off-street
24 parking requirements under subsection 2101.1, and
25 pursuant to 11 DCMR section 3104.1, for a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exception to allow a child development center, that is
2 50 children and 16 staff, under section 205. The
3 property is zoned R-5-B and it's located at 2525
4 Ontario Road, N.W., Square 2565, Lot 805.

5 CHAIRPERSON GRIFFIS: Very well. Let's
6 proceed. Good morning.

7 MS. RODDY: Good morning. My name is
8 Christine Roddy. I am with the Law Firm of Pillsbury
9 Winthrop Shaw Pittman and with me also from Pillsbury
10 is Paul Tummonds. And also with me are Jim Knight of
11 Jubilee Housing, the applicant in this matter, and
12 Bill Bonstra of Bonstra Haresign.

13 And we would actually request that Mr.
14 Bonstra could be recognized as an expert in
15 architecture in this matter, and he is available to
16 answer any questions you may have about his
17 experience.

18 CHAIRPERSON GRIFFIS: Sure, absolutely.
19 Mr. Bonstra, have you been established as an expert
20 before?

21 MR. BONSTRA: Yes, I have.

22 CHAIRPERSON GRIFFIS: Okay. Any questions
23 from the Board, background? I know that we have in my
24 recollection -- do we have any of his pertinent
25 information in the record?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. RODDY: We can submit a resume. We
2 have not submitted a resume as yet.

3 CHAIRPERSON GRIFFIS: Okay. Let me ask if
4 any Board Members have any questions or would like to
5 request that in order for them to provide the
6 recommendation to the Chair. Any questions? Any
7 objections then? Let's proceed and we'll establish
8 Mr. Bonstra as an expert in architecture.

9 A quick question and maybe we'll get --
10 well, there it is. I'll turn it over to you.

11 MS. RODDY: Okay. Well, our application
12 today is fairly straightforward. We're requesting
13 special exception approval from the Board for use of
14 the lower level of an existing building in the R-5-B
15 Zone District as a child development center, and we
16 are also requesting for variance relief from the
17 parking requirements. The parking requirements would
18 require that we provide four parking spaces with the
19 child development center.

20 And we believe that the prehearing
21 statement and the application that we have submitted
22 sets forth the applicant's compliance and satisfaction
23 of the variance standards as well as the special
24 exception standards. And I would like to note that
25 the ANC has unanimously supported this application and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we also have the support of the Office of Planning,
2 the District Department of Transportation and the
3 Department of Health. And I would like to introduce
4 our witnesses for today.

5 CHAIRPERSON GRIFFIS: Good. Before you go
6 too much further, I have just noticed in the handout
7 you have just done here, and I believe actually in a
8 document, I have noticed that the architectural firm
9 of Hickok Warner Cole, which was my past employer, I
10 think they are known as a different iteration, is part
11 of this project. Is that correct?

12 MS. RODDY: Our first submission, the
13 plans were prepared by Hickok Warner Cole, but since
14 then they have switched architects and now --

15 CHAIRPERSON GRIFFIS: I see.

16 MS. RODDY: -- Mr. Bonstra of Bonstra
17 Haresign is the architect.

18 CHAIRPERSON GRIFFIS: Okay. I will bring
19 it to anybody's concern of the Board and as to the
20 applicant or anyone here present for this application.
21 Of course, I did use to work for Hickok Warner Cole.
22 I didn't work on this project at all, but is there any
23 questions or concerns, any concerns of me continuing
24 on this case from the Board?

25 VICE CHAIR MILLER: I don't have any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 concern considering you didn't work on the project and
2 it has changed now, being presented by a different
3 firm.

4 CHAIRPERSON GRIFFIS: Does the applicant
5 have any questions or concerns?

6 MS. RODDY: No.

7 CHAIRPERSON GRIFFIS: Does anyone here
8 present for this application have any questions of me,
9 concerns? Very well. I should say, I mean, the Board
10 takes very seriously these disclosures and oftentimes
11 we whip through them because perhaps we don't even
12 think about it. I mean, Mr. Etherly just made one.
13 So with that, it's worth taking the time. Let's
14 proceed though and get to your first witnesses.

15 MS. RODDY: Okay. We have Jim Knight who
16 will explain Jubilee, as well as the Jump Start
17 Program, and Bill Bonstra who will explain the areas
18 where the children will use, including the outdoors.

19 CHAIRPERSON GRIFFIS: Excellent. Good
20 morning.

21 MR. KNIGHT: Good morning. It's a
22 pleasure to be with you. Just briefly a little bit of
23 history about Jubilee Housing. Jubilee has been at
24 work in the Adams Morgan neighborhood for more than 30
25 years providing affordable rental housing, as well as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a variety of social services to help support its
2 residents in the larger community.

3 Through the years examples of these
4 services have included job placement services, health
5 care, after school programming for children. One of
6 the notable gaps in our menu of services has been a
7 program such as Jump Start which would serve children
8 aged newborn to 4 years-old and that would complete a
9 continuum that already exists from kindergarten
10 through high school for kids.

11 As Jubilee is in the midst of a larger
12 renovation campaign that will renovate eight
13 properties in Adams Morgan, 280 apartments, more than
14 850 people all together, we have had the opportunity
15 to consider how to best use the spaces going forward
16 and in each case have tried to add a resident amenity
17 to each of the properties. Examples on other
18 properties include computer labs, wellness centers,
19 after school programming.

20 In this case, the Ontario property, 2525
21 Ontario Road, presented an opportunity to launch a new
22 service called Jubilee Jump Start and that will be led
23 by a separate 501(c)(3) entity, but an affiliate
24 organization of Jubilee Housing.

25 The sort of plan and business model for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the program is to serve up to 50 children who would be
2 made up, approximately, three quarters of which from
3 Jubilee households in that property and other
4 properties. An additional quarter of the population
5 might come from the larger neighborhood. I will
6 correct that slightly. The three quarters is expected
7 to be low income children. The one quarter is
8 expected to be market rate children, market paying
9 children. All children deserve better than market
10 rate.

11 The idea being though that there would be
12 a mix of social diversity as well as an income stream
13 that will help support the project from market paying
14 customers, but it is anticipated that nearly all of
15 the participants of the program would come from the
16 surrounding neighborhood.

17 The basic services provided will meet the
18 needs of children aged newborn to 4 years-old. There
19 will be three separate centers within the larger space
20 that are grouped according to ages and needs. So
21 there will be an infant section, a toddler section and
22 a pre-K or pre-kindergarten section within the space
23 and the curriculum will be adapted to the specific
24 needs of the children or the age groups.

25 We feel pretty comfortable that we can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meet the needs of the relief that we're requesting
2 today, primarily around the way that the facility will
3 be staffed and run, staff of up to 16. We expect that
4 most would come from the neighborhood or nearby and
5 use public transportation.

6 In most of our other service providers or
7 service agencies that are our affiliates in the
8 neighborhood, there is a rather minimal impact on
9 parking from staff. The larger Jubilee Ministries has
10 access to some central parking. So for the handful of
11 staff members that might come from outside the
12 neighborhood, there would be parking available.

13 As we have indicated, we expect that all
14 of the participants, the children and the families of
15 the children, would be within walking distance and on
16 most days that there would be a brigade of strollers,
17 if you will, coming up to the center. The odd
18 household that might come from the outside area would
19 make use of what we're proposing to be a loading zone.

20 If you look to the right of the facade of
21 the building right now where we're showing a small
22 fence, I'm told there is a pointer, I don't know how
23 to do this, right there, there is a cut-out for
24 parking or for a driveway that is not actually used.
25 So that is one spot. If we were to be allowed to take

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the spot next to it by sacrificing one parking spot,
2 we would gain enough loading zone for two. And we
3 would expect that the relatively light vehicular
4 traffic would be served well by that particular
5 orientation.

6 CHAIRPERSON GRIFFIS: That is something
7 you're pursuing. Is that correct?

8 MR. KNIGHT: It is.

9 MS. RODDY: It is and the Department of
10 Transportation has offered to work with the applicant
11 in establishing the loading zone.

12 CHAIRPERSON GRIFFIS: Okay. And how wide
13 is the curb cut? I don't recall what the dimension
14 was. Do you have a curb cut there?

15 MS. RODDY: There is a curb cut. I don't
16 know the dimensions of it though.

17 MR. BONSTRA: I would say, approximately,
18 6 to 8 feet existing.

19 CHAIRPERSON GRIFFIS: Okay. I'm sorry to
20 interrupt you, but it would be interesting to know
21 what the regulations are in terms of parking and if
22 you had a legal parking, how far away from a curb cut
23 you would have to be, because conceivably you could
24 mark it that you took 5 feet on each side and you had
25 8 feet there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Then you wouldn't necessarily have to take
2 a full space on the whole block, but you might be able
3 to get a two car drop-off area and not sacrifice a
4 full parking on that block. Anyway, just perhaps a
5 thought. Okay. Let's continue.

6 MR. KNIGHT: I just also wanted to
7 indicate that the core services are anticipated at
8 least at opening would operate from 9:00 to 5:00 with
9 staff on the site more like 8:00 to 6:00, even to 7:00
10 in the evening. We anticipate opening some non-
11 traditional hours that would be from 6:00 until
12 midnight, perhaps eventually even overnight as demand
13 is dictated.

14 In our preliminary market study of the
15 neighborhood, there was significant interest in these
16 after hours services, but not enough to feel like we
17 would open those services on day one, so that we would
18 operate the core program for the first six months or
19 so and further demonstrate the need and then consider
20 opening the second shift.

21 CHAIRPERSON GRIFFIS: This is fascinating
22 because this is the first application that I have been
23 a part of in years that has talked about a program of
24 these hours. And I note that in the footnote of your
25 application you did talk to the surrounding area,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Barbara Chambers being one that had the similar.

2 What is the demand for that? Who actually
3 needs child care overnight?

4 MR. KNIGHT: Well, the majority of Jubilee
5 residents are very low income and many work shift
6 work. Many clean offices on second shift even
7 overnight, might be in the hospitality industry and
8 work in second and third shifts.

9 CHAIRPERSON GRIFFIS: So they may go on at
10 8:00 in the evening and get off at 4:00 in the
11 morning?

12 MR. KNIGHT: Right.

13 CHAIRPERSON GRIFFIS: Right. I see.
14 Okay.

15 MR. KNIGHT: And while our market research
16 suggested that there is some need and our anecdotal
17 experience of being on the properties for 30 plus
18 years is additional indication of need, there is some
19 hesitancy on the part of families to use a central
20 center after hours. They would rather have their
21 children cared for in their home and might bring a
22 baby sitter in.

23 So that is where we feel it necessary to
24 pursue that further and after six months of operation
25 hopefully have demonstrated a capacity that might then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be wanted by surrounding households. So it's not
2 certain, at this point, how much after hours activity
3 would exist. But we were -- in preparing to open the
4 center, it was anticipated that there would be those
5 services.

6 CHAIRPERSON GRIFFIS: Okay. Understood.
7 And you're indicating that the child development
8 center is all going to be in the basement or cellar
9 level. Is that correct?

10 MR. KNIGHT: Yes, the ground floor.

11 MS. RODDY: Yes.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. RODDY: It's not the first floor.
14 It's the ground floor of the building.

15 CHAIRPERSON GRIFFIS: Okay. And what is
16 it previously used for?

17 MR. KNIGHT: It has had several uses
18 through the years. It currently has an existing C of
19 O on one wing of the property that formerly served the
20 Sitar Center for Performing Arts.

21 CHAIRPERSON GRIFFIS: Oh, right.

22 MR. KNIGHT: Which recently moved on and
23 got its own space in the neighborhood. The left wing
24 of the property is currently a large laundry area for
25 the residents and a storage area for the organization.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Are you creating new
2 openings or excavating any areas around?

3 MR. BONSTRA: Mr. Griffis, I would be
4 happy to respond to the physical aspects --

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. BONSTRA: -- of the property in my
7 presentation.

8 CHAIRPERSON GRIFFIS: Good.

9 MR. BONSTRA: If that would suffice.

10 CHAIRPERSON GRIFFIS: We'll get to that.
11 I won't jump the gun then. Let's get back into
12 programming. And then you made a statement. Let me
13 say I'm cutting you off kind of in your presentation
14 because I think it's a very full application.
15 Everything is in here. I think the Board has some
16 specific questions that we can dive right into.

17 You talked about anticipating that the
18 staff would be from the area or take public
19 transportation. What would secure in our minds that
20 understanding? I mean, frankly, everyone says that
21 and, of course, everyone is going to ride scooters and
22 car-pool. How do we really know that's happening?

23 MR. KNIGHT: I don't know how it would be
24 most helpful for us to demonstrate that to you.
25 Jubilee Housing itself currently has a staff of 20 and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fully two-thirds, if not three-quarters, are either in
2 the neighborhood or use public transportation.

3 CHAIRPERSON GRIFFIS: Okay. So from
4 current programs, that's where your employment base is
5 coming from. And service of public transportation to
6 this locale, what is the convenience of it?

7 MR. KNIGHT: All over the place. Red Line
8 and Green Line are accessible bus stops throughout the
9 neighborhood.

10 CHAIRPERSON GRIFFIS: Okay.

11 VICE CHAIR MILLER: Can I just follow-up
12 on that before you --

13 CHAIRPERSON GRIFFIS: Yes.

14 VICE CHAIR MILLER: Okay. I think you
15 also said that those few that drive have access to
16 some central parking. What were you referring to?

17 MR. KNIGHT: Jubilee Housing and then Jump
18 Start are part of a larger, loose sort of network of
19 service agencies that have some central property
20 within the Adams Morgan neighborhood. There is a
21 property located at 1640 Columbia Road that has a
22 large lot in the back. It's possible to contract
23 parking in that lot. We have a preferential access to
24 those spots as needed. So depending on what staffing
25 needs would emerge, we would be able to get parking in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that location or others like it.

2 VICE CHAIR MILLER: Is it a lot you own or
3 just certain lots that you lease from?

4 MR. KNIGHT: I don't mean to be
5 complicated in the answer. Affiliate organizations
6 own the space.

7 VICE CHAIR MILLER: Okay.

8 MR. KNIGHT: And we have a preferential
9 relationship there.

10 VICE CHAIR MILLER: Okay. Thank you.

11 CHAIRPERSON GRIFFIS: Okay. I don't have
12 any other -- actually, one other quick thing. Of
13 course, we're looking at the criterium under 205 and
14 205 is that you would be able to be properly licensed.

15 Is there additional licensing that would
16 be required for the off hours that you're talking
17 about in that program or is it all-encompassing in the
18 same licensing and procedures and the square footage?

19 MS. RODDY: I believe that Title 29
20 provides that if it's less than 24 hours, that is the
21 same licensing procedure.

22 CHAIRPERSON GRIFFIS: I see. Okay. Okay.
23 Good clarification. I was not familiar at all. There
24 it is. I think I don't have any other questions at
25 this time. We'll get into obviously a little bit more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 detail, so let's proceed.

2 MS. RODDY: Okay. Mr. Bonstra, if you
3 would just like to discuss the property.

4 MR. BONSTRA: I'm Bill Bonstra with
5 Bonstra Haresign Architects. I'm here to talk about
6 the physical aspects of the property. The existing
7 building will be renovated in its entirety. It is a
8 building that is three stories plus an existing cellar
9 area. As Mr. Knight said, the existing cellar area on
10 the right side of the building, I believe it's on the
11 right --

12 MR. KNIGHT: Yes.

13 MR. BONSTRA: -- is now occupied or was
14 occupied as the Sitar Center. The other wing here was
15 occupied or is currently occupied as an area for
16 washing machines and what have you. The three story
17 building above will be renovated for residential
18 units.

19 Even though this drawing shows that
20 courtyard with the surrounding areas, that courtyard
21 is one level above where the proposed Jump Start
22 Program would be located, and this will be a courtyard
23 specifically for the residents of the residential and
24 is not anticipated to be used by the Jump Start
25 people. As you can see by this elevation and you can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 see by the plan here, there is a sharp grade in the
2 front. So this is one level above this area. Other
3 unique aspects of the property --

4 CHAIRPERSON GRIFFIS: Sorry, just to be
5 clear. So in that interior courtyard, when you're
6 down at this level, the day care center, you're not
7 walking out a door into that courtyard?

8 MR. BONSTRA: That's correct.

9 CHAIRPERSON GRIFFIS: So you have windows
10 that are up high?

11 MR. BONSTRA: There are some high windows
12 along that edge, yes.

13 CHAIRPERSON GRIFFIS: I see. Okay.

14 MR. BONSTRA: As a basement window would
15 be in a house.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. BONSTRA: Other unique aspects of the
18 property. The building itself is actually removed
19 from the property line at both sides and its rear and,
20 in fact, the rear abuts a property. It does not abut
21 an alley, so there is no alley access to this building
22 as you would typically find throughout the city.

23 CHAIRPERSON GRIFFIS: But that is showing
24 the extent of the property. Is that correct?

25 MR. BONSTRA: That's correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay. And so you're
2 saying that rear property line abuts the rear yard of
3 the adjacent apartment building?

4 MR. BONSTRA: That's correct.

5 CHAIRPERSON GRIFFIS: That fronts on 17th
6 Street?

7 MR. BONSTRA: Yes.

8 CHAIRPERSON GRIFFIS: Which I note from
9 your Exhibit A. Okay.

10 MR. BONSTRA: Yes. The Jump Start Center
11 has three age groups, toddlers, preschoolers, infants
12 and then this area is a teachers area. The building
13 then will have a laundry room, electrical room and
14 utilities in this area of the building.

15 The main entry, as we talked about
16 earlier, is here and actually the main door is here
17 for access to the center. There are ancillary doors,
18 egress doors, here from the toddlers area. There are
19 doors here from both the preschoolers and the infants
20 area. That is for access to the grade around this
21 building, which in fact is being cut down here. What
22 is significant in this regard is this dark black area,
23 which is essentially the neighboring building built to
24 the property line, three or four stories tall, as you
25 can see from the elevation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Is there
2 fenestration on that side?

3 MR. BONSTRA: Yes, windows.

4 CHAIRPERSON GRIFFIS: On the adjacent
5 building?

6 MR. BONSTRA: I'm sorry?

7 CHAIRPERSON GRIFFIS: On the adjacent.

8 MR. BONSTRA: Oh, on the existing
9 building, no. There is no fenestration. It's a solid
10 -- it's actually a party wall, I believe, so it was
11 built to be shared, but the uniqueness of this
12 situation --

13 CHAIRPERSON GRIFFIS: Is it a row type
14 dwelling?

15 MR. BONSTRA: Yes.

16 CHAIRPERSON GRIFFIS: Okay. I'm noting
17 just Exhibit A is the base atlas, which actually shows
18 the footprint on the surrounding square of the rest of
19 the buildings, which I think is informative. Okay.

20 MR. BONSTRA: In terms of the development
21 of the area around the building, again the entry would
22 be more of a hardscape. It would be an area with a
23 canopy that would have benches possibly for the
24 waiting of parents coming to pick up their children,
25 possibly for waiting to have their parents come and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 pick them up by car.

2 And then around the back and other side we
3 have a number of different spaces. At the top of the
4 sheet here we see a little tricycle area for high
5 speed tricycles running around this little circuit
6 here. That would be probably some kind of rubber
7 paving or some kind of resilient paving that was also
8 -- allowed water to drain through.

9 We have two play areas here and here which
10 flank a sandbox, a sandbox typically used by toddlers,
11 possibly preschoolers here. Then there is a little
12 garden area with benches that might be an area where
13 the kids could read or, you know, learn about certain
14 things in nature. The whole area is then fenced by a
15 solid fence, maybe board and batton wood fence up to,
16 I believe, what is allowable, 7 feet, so that that
17 would, in fact, be around this property.

18 The current property has a chain linked
19 fence around it which one can look through, but the
20 notion here is that we want to enclose this a little
21 bit visually. And you can see some doors that come
22 out here, here and the main door here into those
23 areas.

24 CHAIRPERSON GRIFFIS: Excellent. Any
25 other questions? Pretty rich in shrub layout in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 front there just for a comment, but okay.

2 VICE CHAIR MILLER: All right. I had a
3 question.

4 CHAIRPERSON GRIFFIS: Good. Ms. Miller?

5 VICE CHAIR MILLER: Is there some
6 licensing requirement or some guidelines as to like
7 what size the play area should be outside?

8 MS. RODDY: There is a licensing
9 requirement under Title 29. I believe it's 60 square
10 feet per child, I would have to double check that, for
11 outdoor and 35 square foot per child indoor. And the
12 applicant does meet these standards.

13 VICE CHAIR MILLER: And is it different
14 with respect to infants versus toddlers versus
15 preschoolers?

16 MS. RODDY: I don't have the information
17 on whether there is a distinction made in the code for
18 that. I believe from the section that -- I have it
19 with me and could look it up and let you know, but as
20 far as I know I think it's just 35 square foot per
21 child.

22 VICE CHAIR MILLER: Okay. I was just --
23 I thought that another department was looking at that
24 aspect and I just wanted to make sure.

25 MS. RODDY: The Department of Health did

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 look at that and they did provide a letter of
2 recommendation that this be approved.

3 VICE CHAIR MILLER: Thank you.

4 BOARD MEMBER MANN: What did you say were
5 the adjacent uses next to the play area on the rear of
6 the building?

7 MR. BONSTRA: There are a series, a number
8 of apartment buildings of similar size.

9 CHAIRPERSON GRIFFIS: Oh, can you turn
10 your mike on?

11 MR. BONSTRA: Sorry. A similar size and
12 character to this existing building, three and four
13 story masonry structures. There is -- I believe
14 that's a single-family row house here and this is the
15 rear yard for that house. So that is a single-family
16 exposure, but it's all multi-family housing apartments
17 around the property on the other sides.

18 BOARD MEMBER MANN: And has there been any
19 determination on how many children will be allowed in
20 the play area at one time?

21 MR. KNIGHT: We would anticipate a maximum
22 for each age group. So there is anticipated to be 12
23 toddlers at a time, so 12 would be the most in the
24 toddler age range. The facility would hold, when
25 full, 16 preschoolers.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We sort of anticipate staggering their use
2 of the space. That exact program detail hasn't been
3 completed. We kind of want to see how the -- our
4 ideas of what will work and the realities mesh, but
5 there is clearly a sense that we'll need to monitor
6 that playground time. We'll have to and we'll want
7 to.

8 BOARD MEMBER MANN: Monitoring it because
9 of the potential like sound reverberation or other
10 aspects?

11 MR. KNIGHT: Well, primarily for safety
12 because these are children.

13 BOARD MEMBER MANN: For safety.

14 MR. KNIGHT: They shouldn't be
15 unsupervised, but in addition for any kind of
16 behavioral stuff that might arise as well.

17 BOARD MEMBER MANN: Okay. Thank you.

18 CHAIRPERSON GRIFFIS: Any other questions,
19 at this time? Very well. Let's continue. Anything
20 else?

21 MS. RODDY: Actually, Mr. Bonstra, could
22 you tell us if there is going to be any treatment to
23 the fences that might help with the sound?

24 MR. BONSTRA: Well, we discussed the
25 actual construction of the fence to be a staggered

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fence, which not only is attractive on both sides, but
2 it also offers some sound baffling there. We also
3 talked about planting areas and, you know, hanging
4 boxes and things like that, which can be found around
5 the area. We also will have some shrubs and bushes
6 and what have you which will also muffle sound.

7 MR. KNIGHT: May I add one comment on
8 the --

9 CHAIRPERSON GRIFFIS: You said hanging
10 boxes? Does that mean like flower boxes?

11 MR. BONSTRA: We talked about some hanging
12 planters or things that might have some vines to
13 soften the fence. Typical of what you would find in
14 a residential application.

15 MR. KNIGHT: May I add one comment about
16 the playground use? We acknowledge that there are
17 limitations in the footprint that we have available
18 and we would love to have an expansive playground area
19 and it's just not possible on this property. We have
20 explored using other spaces in the neighborhood.
21 Meridian Hill Park is two blocks away and already
22 anticipate a long trail of kids walking down to the
23 park.

24 As mentioned, we have affiliate providers
25 in the neighborhood who also have additional space and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we intend to explore uses for, you know, kids getting
2 out of the footprint of the building, but those would
3 be structured activities where there would be staff on
4 hand and supervised, but just didn't want to
5 acknowledge that there would be additional outdoor
6 opportunities beyond what you see in the drawings.

7 CHAIRPERSON GRIFFIS: Would that be a
8 daily program experience or is that something on
9 occasion you would utilize the other parks and areas
10 in the neighborhood?

11 MR. KNIGHT: It's a little of each. I
12 think the idea is that it would be structured
13 regularly and we haven't come to terms yet with what's
14 optimal there.

15 CHAIRPERSON GRIFFIS: Okay. Other
16 questions?

17 VICE CHAIR MILLER: What's at Meridian
18 Hill Park? Is that open space or do they also have
19 any playground equipment?

20 MR. KNIGHT: It's primarily open space.
21 Jubilee has another property another block and a half
22 away where there is a fenced playground area with
23 space and it is Jubilee's lot, so that would be the
24 other primary place to play.

25 VICE CHAIR MILLER: And that's not being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 used all the time? There is some time available for
2 another center to use it?

3 MR. KNIGHT: It's sort of hard to describe
4 this in words. There is another Jubilee affiliate,
5 the After School Program, who has its own playground
6 area and we would need to coordinate schedules and
7 usage, but it's Jubilee monitored, so we would have
8 the opportunity to do that.

9 VICE CHAIR MILLER: Okay. Thank you.

10 BOARD MEMBER MANN: I have one additional
11 question.

12 CHAIRPERSON GRIFFIS: Yes, Mr. Mann.

13 BOARD MEMBER MANN: Something that I was
14 a little confused about earlier when you were
15 describing as we're looking at the front of the
16 building to the right, I didn't quite understand what
17 the use of that space was going to be as it relates to
18 the curb and the curb cut. Maybe I just sort of
19 missed that conversation.

20 MR. KNIGHT: I'll try again. While we
21 anticipate the bulk of our clientele kids and families
22 to come on foot from the neighborhood, inevitably,
23 there will be some vehicular traffic. And our sense
24 was that the best way to handle that was to create a
25 loading zone area in front of the building. Since

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there is an existing curb cut already, our sense was
2 it would not take much to extend that into an ample
3 loading zone and we have begun pursuing that with the
4 city and have been encouraged that that would be a
5 good solution.

6 BOARD MEMBER MANN: You said that would be
7 a larger loading zone than is depicted on the plan or
8 as depicted on the plan?

9 MR. KNIGHT: As depicted on the plan.
10 Larger than the existing curb cut. The existing curb
11 cut is not quite large enough by itself for a car to
12 pull-in and out comfortably. So by --

13 CHAIRPERSON GRIFFIS: I think we ought to
14 be clear, because it's not showing on the plan what
15 they are anticipating. I think Mr. Mann understands,
16 but what's showing there is one parking space.
17 Conceivably, what you are proposing is to work with
18 public space and to prohibit parking on the street, so
19 that you might have a pull-in lane basically.

20 MR. KNIGHT: Um-hum.

21 CHAIRPERSON GRIFFIS: Right?

22 MR. KNIGHT: Yes, that's correct. And
23 most multi-family apartment buildings in the
24 neighborhood have a large loading zone that they are
25 already granted in front of their properties.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: At the front,
2 correct?

3 MR. KNIGHT: This particular property does
4 not have one. We would be in our rights to pursue
5 that as well, but we feel like the most -- the easiest
6 thing for the neighborhood would be this particular
7 solution.

8 CHAIRPERSON GRIFFIS: Okay. So the
9 loading would be signed for our familiarity, because
10 it's not actually a zoning loading area. There would
11 be "no parking, entrance" it might say. Is that
12 right? Mr. Mann?

13 BOARD MEMBER MANN: Is that you pull-in
14 and back-out of that space? Is that the idea?

15 MR. KNIGHT: Ontario is a one-way street
16 at this site, and so the idea would be that the --

17 CHAIRPERSON GRIFFIS: Yes, but he is
18 asking specifically. You are showing that parking
19 space. I mean, if I understand you correctly, you're
20 asking are the parents going to pull-in to that area,
21 drop off their children, and then back-out and drive
22 away?

23 MR. BONSTRA: What's shown there actually
24 is not a parking space. That's shown as a ramp.
25 There is a ramp that would come up right here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Right.

2 MR. BONSTRA: What we're talking about is
3 that there is an edge, which is the curb line here,
4 and it has parking along the street. And there is a
5 curb cut along there of about 8 feet, so, you know,
6 we're applying for from DOT to have that extended a
7 little bit, so that you could have a little bit of a
8 lay-by there, instead of on-street parking.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. BONSTRA: But to have a break in the
11 gap in the parking.

12 CHAIRPERSON GRIFFIS: Good.

13 MR. BONSTRA: For drop off.

14 CHAIRPERSON GRIFFIS: Important things.
15 Of course, then that's a ramp. The lay-by is the
16 actual term that you needed to use. Mr. Mann, I
17 think, now understands this. I think we all should.
18 But it's clear that you are not looking that cars
19 would pull-in there for any reason. Okay. All right.

20 MR. BONSTRA: No, it's -- in fact, and
21 that's not part of the application so much, as it is
22 just a programming aspect that we might want to take
23 into consideration for how the children will be
24 dropped off.

25 CHAIRPERSON GRIFFIS: Okay. But it is an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 impact to 205 of the special exception of whether it
2 would create, by having this, any adverse. And we do
3 have the parking requirement that is attendant to it,
4 which, of course, you've come for relief also. Okay.
5 Good. Any other questions? Quick clarifications?
6 Let's just proceed, but a couple of quick things,
7 because we're going to have to run through a lot of
8 detail as we get further into this.

9 The number of children you've talked about
10 is 50. And what I would like to differentiate is
11 whether that is an on-site number or if that's the
12 total enrollment number and that will be particularly
13 of importance in this application, I believe, because
14 of the differing programs that you're proposing. So
15 what's your total enrollment number thoughts? Is that
16 the 50 number?

17 MR. KNIGHT: No, that would be at any one
18 given time, any one program slot. The idea will be
19 that in time we will have multiple shifts, so we need
20 two different -- two and three shifts in a given day,
21 so that 50 x 3 would be the outside enrollment number.
22 But as we're currently designing the interior, there
23 is a little bit of gap there. It kind of depends on
24 how many toddlers, infants and preschoolers ultimately
25 attend as to how that total number -- how the 40

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 number, which is what we say 12, 12 and 16, how that
2 comes to the 50 number on the upside.

3 CHAIRPERSON GRIFFIS: Okay. Well, that's
4 an interesting point that you bring up. If you were
5 to have a full transition on every shift and you had
6 three shifts, that's 150 students that would be
7 enrolled. Am I understanding you correctly?

8 MR. KNIGHT: That is the sum of 3×50 .
9 We don't anticipate that kind of participation.

10 CHAIRPERSON GRIFFIS: Thank you.

11 MR. KNIGHT: In the center.

12 CHAIRPERSON GRIFFIS: I think the math
13 teacher has left already, but I think we'll pass.

14 MR. KNIGHT: Pardon me. I don't expect
15 the nontraditional hours to fill to that capacity.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. KNIGHT: But there would be an
18 overlap.

19 CHAIRPERSON GRIFFIS: Okay. Good.

20 VICE CHAIR MILLER: Wait. What were you
21 referring to with the 12, 12 and 16 for the 40?

22 MR. KNIGHT: Okay. I thought that was
23 clear. I am sorry. We expect to have 12 infants, 12
24 toddlers and 16 preschoolers as our primary enrollment
25 in a given shift. If it turns out that the need is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 greater, it's a teacher/student ratio issue. So if we
2 don't need as many infant slots and toddler slots, we
3 can increase the total number of preschooler slots up
4 to the maximum of 50. The ideal program use is 12, 12
5 and 16. But if the demand is different than that,
6 then we would have the room to reconfigure those uses
7 to an upper limit of 50.

8 VICE CHAIR MILLER: So you would go to 50
9 if you had a different population, is that it, than
10 you anticipate other than the --

11 MR. KNIGHT: We would have the capacity to
12 go to 50 if the population demonstrated a different
13 need.

14 VICE CHAIR MILLER: Okay.

15 MR. KNIGHT: The goal of the program is to
16 be with the same children from newborn to preschool,
17 so there is an idea we -- an idea of succession to
18 each group, but it may not play out that way. We may
19 have more new kids at the older ages and we may not
20 carry that continuum through as planned.

21 CHAIRPERSON GRIFFIS: Excellent. Anything
22 else right now? Very well. Let's proceed.

23 MS. RODDY: That's all that we have at
24 this moment.

25 CHAIRPERSON GRIFFIS: Very well. Let me

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ask is the ANC present? ANC-1C? Any representative
2 from the ANC? Not noting any ANC representation this
3 morning, why don't we move ahead then to the Office of
4 Planning's report. A very good morning to you.

5 MR. MOORE: Good afternoon, Mr. Chair.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MR. MOORE: And Members of the Board. I'm
8 John Moore with the Office of Planning and I would
9 like to address, first of all, any concerns that the
10 Board may have regarding these speeding tricycles. We
11 would insist upon 5 miles speeding be posted and speed
12 bumps.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MR. MOORE: As the Office of Planning
15 understands the application, it meets the standards of
16 205. The only area of concern is the fact that the
17 site cannot accommodate parking, given the elevation
18 of the site from the grade. They would be required to
19 have four parking spaces. We didn't think that the
20 impact of those four parking spaces on the community
21 would be negative enough at all, although we did yield
22 to the Department of Transportation and I think you
23 have a copy of their report. They said they will work
24 with the applicant in terms of addressing that, it has
25 been called the lay-by, for purposes of this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discussion.

2 And I'm sure that DDOT will be willing to,
3 of course, do a revised report to the Board once they
4 have agreed with the applicant in terms of how that
5 can be accommodated. But given the internalness of
6 the use, being that most of the students and the staff
7 would be from the community, we don't think there is
8 going to be a pressing need for that from the Office
9 of Planning's perspective. With that, I would be
10 willing to address any questions you may have.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much. Let's take Board questions if there
13 are any. Ms. Miller?

14 VICE CHAIR MILLER: I wonder if you could
15 address the question of noise and if there are any
16 potential adverse impacts from noise? I know there is
17 in the record Exhibit No. 30 from a neighbor who says
18 the noise would be terrible. We will probably hear
19 from the neighbor, but the neighbor is next door,
20 Beverly Court at 1736 Columbia Road.

21 MR. MOORE: I totally agree with the
22 neighbor that there will be a noise factor. Columbia
23 Road is one of the most busiest roads we have in the
24 city. The noise would come from -- and the site is
25 only half a block from Columbia Road. So the noise,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as I see it, would be noise generated by traffic on
2 Columbia Road, but not from the center.

3 VICE CHAIR MILLER: So you're talking
4 about traffic noise. Is that all?

5 MR. MOORE: Yes, I am.

6 VICE CHAIR MILLER: What about noise from
7 the children playing?

8 MR. MOORE: If you again put the level,
9 the decibel level of noise of those children playing,
10 and of course there won't be 50 children at one time
11 on the site playing once we can get these tricycles
12 under control. When you buffer that noise against the
13 noise generated by traffic on a continuous basis on
14 Columbia Road, this is minimal.

15 VICE CHAIR MILLER: It didn't sound like
16 a lot of traffic was going to be generated from what
17 I have been hearing. It seemed like a lot were going
18 to be using public transportation.

19 MR. MOORE: Well, that's my point.

20 VICE CHAIR MILLER: Oh, that's the direct
21 point.

22 MR. MOORE: I'm talking about the normal
23 traffic flow on Columbia Road.

24 VICE CHAIR MILLER: There already is a
25 loud noise. Okay. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Good. Any other
2 questions? Does the applicant have any cross
3 examination of the Office of Planning? No cross?
4 Excellent. Thank you very much. We really do
5 appreciate it. Excellent report. I also note it is
6 valuable to look at the attached aerial photograph as
7 well as all of the analysis, but it also talks about
8 the adjacencies as we have looked at of what, one, Ms.
9 Miller just brought up on the other property, but also
10 in the rear and on the south side, I believe, is
11 there.

12 That being said, let's move ahead to any
13 other attendant Government Agency reports. I would
14 note that we also do have Exhibit 24, which is the
15 Department of Health, which is recommending approval
16 of the application. We have made note of that in our
17 other comments on the application. So if there are no
18 other further reports, we can move ahead to ANC, which
19 had indicated was not here. We will take note of
20 Exhibit 25, which is in support of the application.
21 It was duly noted and a quorum was present and I
22 believe it does rise to the level of being granted
23 great weight.

24 Let's go to persons then to provide
25 testimony. Persons to provide testimony in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Application 17456 can come forward at this time,
2 support and also in opposition. Let's bring everybody
3 up. Anyone that would like to address on this
4 application? I don't think we have hundreds today, so
5 let's fill the panel.

6 And with that I'm going to ask that you
7 state your name and address for the record. I would
8 also ask you to state immediately whether you are in
9 support or in opposition to the application and then
10 we can move ahead to your testimony. You're just
11 going to need to touch the button on the base of your
12 microphone and we'll turn it on. Excellent. Thank
13 you very much.

14 MR. McKEVITT: Okay. My name is Stephen
15 McKevitt, 1736 Columbia Road, and I'm in opposition.

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. McKEVITT: And I have a letter from
18 Beverly Court Cooperative, which is the building which
19 is immediately to above on their drawings, which is to
20 the north --

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. McKEVITT: -- of 2525 Ontario Road.
23 And what I would like to do is just read the letter,
24 if I may?

25 CHAIRPERSON GRIFFIS: Sure. Is this the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 same letter that you submitted?

2 MR. McKEVITT: No.

3 CHAIRPERSON GRIFFIS: Okay. Good.

4 MR. McKEVITT: This -- that was my
5 personal letter and this is actually a letter from the
6 cooperative and it's signed by our president. Okay.
7 "Ladies and gentlemen, this letter is being written in
8 regard to the zoning variance and special exception
9 that are being requested by Jubilee Housing for its
10 property at 2525 Ontario Road.

11 These would allow proposed child
12 development center to be constructed and operated in
13 a residentially zoned area. This proposal would
14 adversely affect the residents of our apartment
15 building located at 1736 Columbia Road, N.W. While a
16 child development center is a worthy project, we
17 believe that the proposed site is an inappropriate
18 location for such a facility.

19 Therefore, we ask that approval of this
20 special exception and variance be denied or be
21 postponed pending further review of the size and
22 impact of the proposed center. Our concerns are the
23 following: The special exception is for permission to
24 allow the proposed center to conduct its business in
25 Jubilee's apartment building at 2525 Ontario Road.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Such activity is now not permitted by the zoning laws.
2 The cooperative and its neighbors in nearby buildings
3 would be subjected to unacceptable noise.

4 Four residential apartment buildings come
5 together at the interior corner of our property, all
6 of them with windows facing the tiny yards between the
7 buildings. Many of our cooperative's members on the
8 south and east side of our apartment building could be
9 adversely affected by this new non-apartment use.

10 On occasion, several years ago Jubilee had
11 a small group of children regularly playing in the
12 back of its property and the noise was unacceptably
13 loud. This was with, perhaps, 10 children. There
14 were many complaints and it was stopped. Jubilee is
15 now planning for 50 children and we're asking where
16 would these children play? The tiny rear yard of
17 their property building? It really would be unfair to
18 the kids. It's not really an appropriate spot for
19 them. There is not sufficient space.

20 The apartment buildings are less than 20
21 feet apart. Jubilee's planners say that the children
22 would be out only during the day, but people use their
23 apartments at all times.

24 The variance request is to permit the
25 proposed activity to be built and operated without the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 necessary parking as required by the zoning law and
2 would cause serious problems. There is absolutely no
3 parking available at the location for this proposed
4 center. This lack of parking along with increased
5 traffic would be unacceptable, especially since
6 Jubilee's plan also proposes to bring in children from
7 outside of the neighborhood.

8 The area does not have sufficient parking
9 now. Well, of course, that's Adams Morgan. This
10 would adversely affect many people in our
11 neighborhood. It also appears the traffic from the
12 center would be occurring day and night. As one of
13 the properties that would be most affected by this
14 proposed activity, our cooperative is concerned that
15 Jubilee has not contacted us about its plan and has
16 not responded to our phone call to its office
17 inquiring about the plan.

18 In the petition for the variance and
19 special exception, it cavalierly dismisses the impact
20 that its proposed activity would have on the abutting
21 buildings and on the neighborhood in general. The
22 fact that Jubilee is not communicating with us is
23 perhaps telling of its understanding of the problems
24 with this petition for approval of the variance and
25 special exception.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Again, we request that the Zoning Board
2 consider the negative impact that these would have on
3 the properties neighboring Jubilee's building and deny
4 or postpone deciding upon its request. The zoning
5 laws, we believe, were developed and implemented for
6 good reasons. The extra activity noise and automobile
7 traffic associated with the center as planned would
8 cause many of our members to have diminished use and
9 enjoyment of their homes here at Beverly Court."

10 CHAIRPERSON GRIFFIS: Excellent. Thank
11 you very much. And I'm assuming that you have copies
12 to submit into the record?

13 MR. McKEVITT: I do. I do. Now, in our
14 letter, we call it two variances. One is an
15 exception, one is a letter.

16 CHAIRPERSON GRIFFIS: That's --

17 MR. McKEVITT: Or one is a variance, one
18 is a special exception, but I do have copies.

19 CHAIRPERSON GRIFFIS: We'll figure it out.

20 MR. McKEVITT: I would also ask -- just
21 one final point is that this is an actual photo,
22 aerial photo and you can see this is our building
23 right here. This is their building and you can see
24 the yard space for what they are proposing is really
25 a very tiny, tiny space with apartment buildings all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 around. And as people have noted, the sound would
2 echo. It would just go, you know, all over the
3 neighborhood.

4 CHAIRPERSON GRIFFIS: Excellent. Any
5 questions from the Board?

6 VICE CHAIR MILLER: I do.

7 CHAIRPERSON GRIFFIS: Ms. Miller?

8 VICE CHAIR MILLER: I just want to follow-
9 up on what you consider to be unacceptable noise
10 related to the children playing. What age group was
11 playing out in that area before that you were
12 referring to?

13 MR. McKEVITT: As I recall, it was pretty
14 much what they are planning now, which is, you know,
15 from preschool, you know, or even toddler all the way
16 up to, I guess, preschool they were talking about.
17 And again, with the noise level, there is Columbia
18 Road, but this introduces an entirely different kind
19 of noise in the back of all of these buildings, which
20 usually you have bedrooms in the backs of buildings
21 and that is what our building has.

22 So again, there is noise. Adams Morgan is
23 noisy. Columbia Road is noisy. But when you go to
24 the back of the building, which is where they plan on
25 putting their, you could call it a, playground, but it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 really is more of a play area, because there is no --
2 you can see how much space there is. That really
3 introduces a different sort of noise than traffic.

4 VICE CHAIR MILLER: Is there a number that
5 is a factor? For instance, if there were six children
6 playing out there versus 10, is that something that
7 would --

8 MR. McKEVITT: I'm assuming, yes, that
9 would be a factor. But, you know, not to get off the
10 point, they were talking about 50 and now I hear the
11 word 150 with different shifts.

12 VICE CHAIR MILLER: Well, no, they're not
13 talking about --

14 MR. McKEVITT: Yes, exactly.

15 VICE CHAIR MILLER: And they're certainly
16 not talking about 50 playing in that area.

17 MR. McKEVITT: Oh, I know, yes, exactly.
18 And there will be kids at different times doing
19 different functions. But yes, definitely the size of
20 it is a factor, you know, the number of children,
21 that's a factor.

22 VICE CHAIR MILLER: And are there any
23 particular hours that you think would --

24 MR. McKEVITT: Well, that is something
25 that was a little surprising was that the hours that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they are talking about, not just for the playground
2 or, you know, not just for their center, but for the
3 use of the center, yes, I suppose is really
4 surprising, because they are talking about very late
5 hours. And, you know, I don't know, you know, how
6 they would even think about ameliorating this noise,
7 you know. It's an apartment building basically that
8 they have with no playground and they want to put a
9 large center in it. I don't really understand, you
10 know, it's -- I'm sorry. It's ignoring the
11 neighborhood.

12 VICE CHAIR MILLER: Okay.

13 MR. McKEVITT: Basically, in which we have
14 been ignored.

15 VICE CHAIR MILLER: Thank you.

16 CHAIRPERSON GRIFFIS: Are there any other
17 questions? Any cross? I'm sorry. Okay.

18 MS. RODDY: No.

19 CHAIRPERSON GRIFFIS: Yes?

20 MS. DEVOE: Hi, I'm Margaret Devoe and I
21 live at 1736 Columbia Road, also. And we also --

22 CHAIRPERSON GRIFFIS: Which is the
23 building north?

24 MS. DEVOE: In the building north.

25 CHAIRPERSON GRIFFIS: Okay. Okay. Good.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. DEVOE: Yes, and my apartment is -- I
2 can see the playground from it.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MS. DEVOE: We -- I didn't know and nobody
5 in our building knew about this until about a week
6 ago, so that's why, you know, we're sort of a little
7 bit disorganized about our response. But anyway, I
8 want to specifically address the level of noise back
9 there that's going to be created by this, because I
10 telecommute and there are periodically children
11 sometimes playing on the little strip there and also
12 there are children who play on balconies in one of the
13 adjacent apartment building.

14 And at times, when -- you are asking about
15 the numbers of children, will that make any
16 difference. Sometimes there are like three or four
17 children after school screaming at the top of their
18 lungs on their little balcony in one of the buildings
19 adjacent and the noise just like bounces from wall to
20 wall there. It's like a noise tunnel, because the
21 buildings are so close to each other that just three
22 or four children screaming is -- you know, it totally
23 drowns out Columbia Road, trust me.

24 So the prospect of -- when I found out
25 about the Jubilee proposal, the prospect of having

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that noise multiplied by 10 certainly alarmed me.

2 CHAIRPERSON GRIFFIS: Right.

3 MS. DEVOE: It just doesn't seem like an
4 appropriate area to have, you know, that many
5 children. There is also a huge rat problem back
6 there. I mean, I wouldn't want to have one of my
7 children running around back there.

8 CHAIRPERSON GRIFFIS: What's back there
9 now?

10 MS. DEVOE: Pardon?

11 CHAIRPERSON GRIFFIS: What is back there
12 now in your understanding?

13 MS. DEVOE: There's not much back there
14 now.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. DEVOE: Right here where --

17 CHAIRPERSON GRIFFIS: I'm not going to
18 have you move too far from your mike.

19 MS. DEVOE: Okay.

20 CHAIRPERSON GRIFFIS: You can just
21 describe it. We have it all in front of us.

22 MS. DEVOE: Up there where they have the
23 play area with wood chips.

24 CHAIRPERSON GRIFFIS: Sure.

25 MS. DEVOE: Which is the end of their yard

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that abuts --

2 CHAIRPERSON GRIFFIS: That's okay.

3 MS. DEVOE: It's okay. It abuts ours.
4 Years ago, somebody at Jubilee put like a concrete
5 slab back there, I guess.

6 CHAIRPERSON GRIFFIS: Is it used -- I
7 mean, I guess that's --

8 MS. DEVOE: It must have been to --

9 CHAIRPERSON GRIFFIS: -- what's now daily?

10 MS. DEVOE: -- with the intent of like
11 having a basketball court.

12 CHAIRPERSON GRIFFIS: I see.

13 MS. DEVOE: Or some sort of recreational
14 use.

15 CHAIRPERSON GRIFFIS: I see.

16 MS. DEVOE: And as Steve here said,
17 periodically there are children, a few children
18 playing in that little area back there.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. DEVOE: And it's very noisy, but the
21 reason I'm bringing up the concrete pad is that it has
22 become a rat condo. Rats like to --

23 CHAIRPERSON GRIFFIS: Sure.

24 MS. DEVOE: -- burrow.

25 CHAIRPERSON GRIFFIS: Sure.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. DEVOE: So there is like huge colonies
2 of rats. You can see the holes all around.

3 CHAIRPERSON GRIFFIS: Market rate rats or
4 are they kind of --

5 MS. DEVOE: They are very market. They
6 are beyond market rate rats.

7 CHAIRPERSON GRIFFIS: Good.

8 MS. DEVOE: And there is the apartment
9 immediately behind Jubilee. Their front is on 17th
10 Street. There is a giant dumpster that abuts this
11 play area that has recently been enclosed.

12 CHAIRPERSON GRIFFIS: Is it part of this
13 property?

14 MS. DEVOE: No, it's like the adjacent
15 property.

16 CHAIRPERSON GRIFFIS: So it's adjacent.

17 MS. DEVOE: But remember there is no alley
18 here.

19 CHAIRPERSON GRIFFIS: Sure, sure. Right.

20 MS. DEVOE: So it's like right up against
21 this property.

22 CHAIRPERSON GRIFFIS: Okay. What other
23 concerns do you have?

24 MS. DEVOE: Well, first of all, it's --
25 you know, it attracts rats. It has recently been sort

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of enclosed in a chain link little building.

2 CHAIRPERSON GRIFFIS: Okay. But that's
3 the adjacent property, right?

4 MS. DEVOE: It's adjacent property.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. DEVOE: But, you know.

7 CHAIRPERSON GRIFFIS: Right.

8 MS. DEVOE: Rats don't respect the
9 property line.

10 CHAIRPERSON GRIFFIS: No, understood. We
11 don't have any control over the adjacent trash.

12 MS. DEVOE: No.

13 CHAIRPERSON GRIFFIS: That's my point.

14 MS. DEVOE: Yes, I understand.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. DEVOE: But, I mean, I just wanted to
17 mainly address the noise back there, you know, the
18 little baffles and stuff that they are talking about
19 ain't going to cut it, because the noise travels up as
20 well. And Ontario Road is also very, very congested,
21 so any addition -- I know they are, you know, down
22 playing the amount of car traffic that's going to be
23 generated. But any additional congestion on that
24 street is just sort of unbearable. There is a fast
25 food restaurant on the corner of Ontario and Columbia

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that, you know, people double park there already to
2 get their chicken and then this is just going to kind
3 of back things up even more.

4 CHAIRPERSON GRIFFIS: Okay. So the
5 traffic is congested because of the other accessory
6 uses, but that bottlenecks up at the corner.

7 MS. DEVOE: Well, it's just a very dense--

8 CHAIRPERSON GRIFFIS: It obviously impacts
9 this area.

10 MS. DEVOE: It's just a very dense
11 neighborhood, yes.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. DEVOE: And the corner -- I mean,
14 there's all kinds of commercial concerns on Columbia
15 Road that, you know, impact this, including the
16 restaurant, which is only a couple of blocks down.

17 CHAIRPERSON GRIFFIS: I'm sorry,
18 including?

19 MS. DEVOE: It's only a couple of blocks
20 down from Jubilee. I mean, a couple of doors down
21 from Jubilee.

22 CHAIRPERSON GRIFFIS: What is?

23 MS. DEVOE: The restaurant on the corner.

24 CHAIRPERSON GRIFFIS: Oh, I see. I didn't
25 hear that part. Okay. Okay. Excellent. Anything

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 else?

2 MS. DEVOE: I also wonder about how
3 children would be evacuated from this back area,
4 because there is no exit.

5 CHAIRPERSON GRIFFIS: Okay. That's an
6 excellent concern. It's beyond our jurisdiction, I
7 would assume.

8 MS. DEVOE: Okay.

9 CHAIRPERSON GRIFFIS: Clearly, the
10 architect would design it to the code and I can
11 imagine they wouldn't get permits if they didn't have
12 that accessibility and egress requirements, but it's
13 an excellent concern to be brought up. Very well.
14 Board questions? Ms. Miller?

15 VICE CHAIR MILLER: Are there children in
16 your building?

17 MS. DEVOE: Yes, there are a few.

18 VICE CHAIR MILLER: And where do they play
19 outside?

20 MS. DEVOE: Nobody goes -- most people
21 don't go outside in our building. It's just not very
22 congenial. You know, the buildings are so close to
23 one another. I mean, periodically, somebody does.

24 VICE CHAIR MILLER: I was just wondering,
25 you know, in fact with these apartment buildings and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I don't have the whole picture here.

2 MS. DEVOE: Yes.

3 VICE CHAIR MILLER: But, you know --

4 MS. DEVOE: Well, like I --

5 VICE CHAIR MILLER: -- is there land
6 around some of these buildings that children are
7 playing on anyway, separate from an organized center?

8 MS. DEVOE: The only one that -- aside
9 from the periodic use of the Jubilee little strip
10 there, there is another apartment building that has
11 little balconies overlooking this area and
12 periodically after school I hear children playing on
13 the little balconies, but they don't play down on the
14 ground, because it's not very congenial at all, you
15 know.

16 VICE CHAIR MILLER: Okay.

17 MS. DEVOE: It's just trashy next to the
18 dumpster.

19 VICE CHAIR MILLER: Thank you.

20 CHAIRPERSON GRIFFIS: Anything else? Any
21 other questions? Nothing on recross? Any cross?

22 MS. RODDY: No.

23 CHAIRPERSON GRIFFIS: Very well. A very
24 good afternoon.

25 MR. KIJEK: Good afternoon. My name is F.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Steven Kijek and I'm a shareholder and I live at 1736
2 Columbia Road, which is north of Jubilee Housing. I'm
3 the primary caregiver of my wife and I spend a lot of
4 time sitting on the fire escape north of Jubilee
5 Housing, which is the top parallel part of this
6 illustration. I see the activity that happens in
7 this.

8 First, I want you to understand this space
9 is so small I don't understand how children are going
10 to function in this small space. I think what needs
11 to be clarified is what are the dimensions of this
12 space? It's extremely small. Where these two
13 dumpsters are, that attracts rats, because there are
14 many restaurants in Adams Morgan. There is one
15 directly across the street and it is a feasting
16 session. The rats run all the way down that parallel
17 property. I mean, the property parallel between the
18 buildings.

19 There is frequent urination that occurs
20 day and night in that alcove space where the dumpster
21 is. And it's Jubilee Housing dumpster and the
22 dumpster is constantly overflowing. As far as noise
23 is concerned, we have a courtyard at Beverly Court, an
24 interior courtyard, and we have voted as a co-op not
25 to develop this, because of how -- and the distance

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 between our courtyard is greater than the distance
2 between Beverly Court and Jubilee Housing.

3 We have voted not to allow people into
4 this land, this courtyard because of the echoing of
5 sound. The distance between our building and Beverly
6 Court is much shorter. I can look and see who is in
7 the window. As far as noise is concerned, there is --
8 my wife is terminally ill, so there is a terminally
9 ill person in the building all day long. There are
10 elderly people in the building that live in the
11 building, so they are there all day long. And there
12 are also people that work from their home. They work
13 from their co-op. They are there all day.

14 As far as parking is concerned, Adams
15 Morgan is impossible to -- it's not impossible. I'm
16 sorry that is not the truth. Adams Morgan is
17 extremely difficult to park in. You have activities
18 that are happening on 18th Street. You have the
19 entire Columbia Road, which is filled with restaurants
20 and retail. Ontario is a one-way street, parking on
21 both sides. There is no handicap parking, by the way.

22 Excuse me. It's a short block. There is
23 congestion. You can only turn right or left when you
24 come to Columbia Road. I personally saw a boy get
25 hit, a child get hit at that intersection when people

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 turn, because when the -- when they turn left from
2 Ontario onto Columbia, there is a crosswalk. People
3 speed, because it is a short block, from Euclid to
4 Ontario to catch the light and when there is
5 congestion, the congestion is, as far as traffic flow,
6 very -- it is extremely difficult.

7 There is a day care center on Ontario Road
8 already and that is creating congestion problems off
9 of Columbia. I think that's all I can add at this
10 point. My mind is going blank.

11 CHAIRPERSON GRIFFIS: Indeed.

12 MR. KIJEK: Please, forgive me for not
13 having prepared myself more --

14 CHAIRPERSON GRIFFIS: That's fine.

15 MR. KIJEK: -- thoroughly.

16 CHAIRPERSON GRIFFIS: We appreciate it.
17 I think there are some articulated aspects that you
18 put in, Mr. Kijek. Is that right?

19 MR. KIJEK: Yes, correct.

20 CHAIRPERSON GRIFFIS: You mentioned a
21 couple of things, speed, pedestrian crossing, the
22 rats, of course, the traffic flow coming up, the trash
23 impact. Just to be absolutely clear for our
24 understanding, I mean, we're looking at the impact
25 that this day care would have on all those elements

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that you brought to our attention. Help me understand
2 briefly what the trash or rat impact would be if this
3 was instituted or if it was not. And do you see maybe
4 on your observations of the other child development
5 center, how does that -- how would you believe that
6 that would impact the safety, pedestrian crossing and
7 speed on Ontario?

8 MR. KIJEK: Well, I was glad to hear that
9 there was a proposal for a speed bump. I think that
10 helps.

11 CHAIRPERSON GRIFFIS: Was that part of
12 this hearing?

13 MR. KNIGHT: No, I think it was --

14 MS. RODDY: No.

15 CHAIRPERSON GRIFFIS: Oh.

16 MR. KIJEK: I'm terribly sorry if I -- I
17 am completely ignorant of the protocols.

18 CHAIRPERSON GRIFFIS: No. Yes, well,
19 protocol or not, we like to have a joke once in a
20 while.

21 MR. KIJEK: Okay. Thank you.

22 CHAIRPERSON GRIFFIS: The Office of
23 Planning made a joke about the tricycle area that was
24 said to be the high speed tricycles. He was saying
25 they were going to ask for a condition of a speed bump

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in that area, but not on Ontario.

2 MR. KIJEK: Oh.

3 CHAIRPERSON GRIFFIS: That was --

4 MR. KIJEK: Well, then if that hasn't been
5 brought up, if this does go through, there definitely
6 -- unless you want injuries --

7 CHAIRPERSON GRIFFIS: Right.

8 MR. KIJEK: -- there should definitely be
9 a speed bump, which is just going to -- it's going to
10 congest -- it's going to make things more congested.
11 It is a narrow street.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. KIJEK: As far as the trash is
14 concerned, rats are running back and forth between the
15 Jubilee House trash and the trash that is in the back.

16 CHAIRPERSON GRIFFIS: Sure.

17 MR. KIJEK: They are running back and
18 forth. It is --

19 CHAIRPERSON GRIFFIS: Okay. I think
20 that's understood.

21 MS. DEVOE: Can I add a little bit to the
22 trash discussion?

23 CHAIRPERSON GRIFFIS: Yes, in just a
24 second though. I don't want you leaving with any
25 false understandings. Of course, we have absolutely

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 no jurisdiction when we step over the property line,
2 so elements like speed bumps, even elements of loading
3 area or taking away and parking are not in our
4 jurisdiction. We won't even condition that as part of
5 our approval. It's informative for us to understand
6 all these elements and how they might impact, but it's
7 not something that we could, in fact, require as part
8 of our zoning review.

9 However, there are numerous aspects that
10 you're bringing up in terms of noise and trash may
11 well be. We need to get a little bit further into
12 that. But I don't want you to feel like we didn't do
13 a speed bump, because, quite frankly, we can't. Okay.
14 Yes, you were going to say briefly on trash.

15 MS. DEVOE: Yes, I want to explain a
16 little bit on the trash. Steve was referring to trash
17 dumpsters that belong to Jubilee Housing.

18 CHAIRPERSON GRIFFIS: That's right.

19 MS. DEVOE: They have two open dumpsters
20 facing Ontario.

21 CHAIRPERSON GRIFFIS: Clearly for the
22 residential units.

23 MS. DEVOE: Ontario Road there.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. DEVOE: Yes. And those are always

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 open.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. DEVOE: I would --

4 CHAIRPERSON GRIFFIS: Do you see the
5 impact of this child development center as --

6 MS. DEVOE: Yes, because, of course, this
7 will generate more trash.

8 CHAIRPERSON GRIFFIS: More trash.

9 MS. DEVOE: I assume that -- I can only
10 assume that the trash from the center will just be
11 dumped into these existing dumpsters, which are just
12 continuously open right onto Ontario Road.

13 CHAIRPERSON GRIFFIS: Okay. Excellent.
14 Good. Any other questions from the Board? Follow-up?

15 COMMISSIONER JEFFRIES: Just a quick
16 question.

17 CHAIRPERSON GRIFFIS: Mr. Jeffries?

18 COMMISSIONER JEFFRIES: I'm just sort of
19 curious if the panel could -- what's your perception
20 about how much space is currently for the top lot or
21 the back? What's your perception of how much -- how
22 wide that space will be?

23 MR. KIJEK: On the top of this
24 illustration here?

25 COMMISSIONER JEFFRIES: Yes. No, the --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 where they have designed where the kids will -- the
2 toddlers will play, the sandlot and the --

3 MR. KIJEK: What is my perception about
4 that?

5 COMMISSIONER JEFFRIES: Yes.

6 MR. McKEVITT: Well, you could ask the
7 architect. I think that's about 12 feet wide.

8 COMMISSIONER JEFFRIES: Well, the word I
9 used is perception.

10 MR. McKEVITT: Oh, perception, okay.

11 COMMISSIONER JEFFRIES: Clearly, I could
12 get --

13 MR. McKEVITT: Sure. I'm sorry. That
14 would be my perception.

15 COMMISSIONER JEFFRIES: Yes.

16 MR. McKEVITT: Because you can see here
17 with the -- in this photo that this space right here
18 is the back of their space.

19 COMMISSIONER JEFFRIES: Yes.

20 MR. McKEVITT: The back of their property.
21 And that is bisected by the property line. So you can
22 see, that space is very small, because part of it is
23 over on this property.

24 COMMISSIONER JEFFRIES: Okay.

25 MR. KIJEK: May I? My perception is that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it is narrow and confining, that's my perception of
2 the space.

3 COMMISSIONER JEFFRIES: Well, I'm really
4 trying to draw parallel to the noise and, you know,
5 being in close proximity to the adjacent buildings and
6 so forth.

7 MR. KIJEK: Yes.

8 COMMISSIONER JEFFRIES: So I'm just trying
9 to get a sense of, you know, whether you're going to
10 be just a noise tunnel that's being created or
11 something. I'm just trying to get at that. And I'm
12 trying to do perception, because sometimes people will
13 walk away thinking that something is much smaller than
14 it really is or vice versa. So I'm just trying to get
15 a sense of, you know, your perception of that. That's
16 fine.

17 MR. McKEVITT: Well, that was my one
18 thought about this entire proposal is what a while
19 back Jubilee did try, it was unofficial, but it was
20 just a little -- using that space for children. And
21 there was a serious noise problem. It was not just --
22 there weren't just complaints from our building, but
23 there are actually four apartment buildings that all
24 come together right there and they stopped doing it.

25 And now, if they are seeking official, not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 just official permission to do it, but this much
2 larger proposal, because this is a good size proposal
3 for a fairly small residential building, that I'm just
4 concerned about how it will play out. Because, you
5 know, again they -- there is no space in the back.

6 COMMISSIONER JEFFRIES: What was this
7 again? You said there were four buildings?

8 MR. McKEVITT: That come together.

9 COMMISSIONER JEFFRIES: That came
10 together?

11 MR. McKEVITT: Yes, they all -- all these
12 -- these four right here, there is Jubilee, there is
13 ours, there is another apartment building, an
14 apartment building and they all just come together
15 right there and they are all, you know, brick and the
16 sound would just --

17 COMMISSIONER JEFFRIES: Well, no. I guess
18 I was dealing more with, you know, terms of, you know,
19 complaining about the noise and then Jubilee.

20 MR. McKEVITT: Oh.

21 COMMISSIONER JEFFRIES: When did all that
22 occur?

23 MR. McKEVITT: Several years ago. I don't
24 know, perhaps eight years ago.

25 COMMISSIONER JEFFRIES: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. McKEVITT: I'm thinking that's my best
2 thought right now.

3 COMMISSIONER JEFFRIES: Okay. Thank you.

4 CHAIRPERSON GRIFFIS: Excellent. Anything
5 else? Ms. Miller, questions? Thank you all very
6 much. We do appreciate it. We'll certainly take that
7 into advisement. If you have written statements, it
8 would be very advantageous for you to put it into the
9 record. I'm going to ask you also to provide the
10 applicant with one before you leave.

11 That being said, let's move ahead, unless
12 there's any other persons present to provide
13 testimony? If there are no other persons to provide
14 testimony on 17456, we will go to the applicant for
15 any closing remarks they might have. There it is.
16 Actually, let's get to a couple of quick questions
17 that did come up in testimony and I know the Board was
18 going to embark on.

19 To begin with one is the trash, we'll get
20 right into that and how it is dealt with, pick up
21 times and enclosures and how it is anticipated to
22 change, if it is. Also, whether there has been any
23 discussion or understanding of term on the special
24 exception, which hasn't come up, but is often
25 attendant to child development centers.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. RODDY: I'm sorry. I was going to say
2 I will let Jim Knight address the trash and I can
3 speak to the special exception.

4 CHAIRPERSON GRIFFIS: Perfect.

5 MR. KNIGHT: Okay. On the trash issue, we
6 do anticipate increased pickups as there might be
7 increased trash with the operation of the center. One
8 of the larger aspects of the full building renovation
9 is that in addition to the work that's being done on
10 the three sides exterior of the property or would be
11 done, the trash area will be redone as well and the
12 entire pad will be rebuilt from scratch and containers
13 and spaces will be improved there.

14 I think anybody who lives or works in
15 Adams Morgan knows that trash and rats are a big part
16 of the neighborhood and that each property owner needs
17 to do as much as they can about that. So our larger
18 renovation of the property will improve the size, the
19 space, the layout of the existing trash areas and we
20 do anticipate increasing the number of pickups which
21 currently is three times a week and we can explore
22 four or five times a week as necessary.

23 CHAIRPERSON GRIFFIS: Is there any
24 building program or special building program after
25 renovation of actually maintaining and cleaning that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 space outside of the regular pickups?

2 MR. KNIGHT: Absolutely. One of the
3 things that is challenging about cleaning the space
4 now is the condition of the concrete and the surround
5 is just a little bit difficult to clean. But as
6 that's freshly poured concrete and the space is in
7 better shape, it becomes easier to sweep and mop and
8 wash. We do wash it regularly currently, but we'll be
9 able to do so more effectively in the future.

10 CHAIRPERSON GRIFFIS: Okay. What else?
11 Any other follow-up questions before the get into the
12 other aspects? Yes, Mr. Mann?

13 BOARD MEMBER MANN: When you were
14 considering reprogramming this building, did you ever
15 give any consideration to providing the play area in
16 the entry courtyard?

17 MR. KNIGHT: Certainly, we did. Several
18 factors involved in that thinking and one is the
19 balance of the needs of the resident population who
20 won't take part in the Jump Start Program and
21 maintaining some sense of space for the other
22 residents, and that was one of the balance issues.
23 Another was just some of the design challenges and
24 limitations of that space as well.

25 CHAIRPERSON GRIFFIS: Yes?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR MILLER: Now that we're on the
2 play area, I'm wondering if you can address what some
3 of the witnesses said from Beverly Court about past
4 experience with children playing in that area having
5 been a problem?

6 MR. KNIGHT: Sure. I'll just note that my
7 tenure is four years at Jubilee Housing and I don't
8 purport to know everything that ever happened, but a
9 sort of institutional memory serves that we have had
10 occasional uses of those spaces attempted, generally
11 for the larger resident community. We have had work
12 days where we came in and improved the condition of
13 the rear section of the U and attempted to facilitate
14 better playground space for residents of the building.

15 To my knowledge, there has not been prior
16 structured use of the space, which would be monitored
17 by program staff, which would have controlled numbers
18 of kids and controlled times of use, so the proposed
19 use by Jump Start would be much more monitored than
20 anything that might have happened in the past and we
21 feel that will help to keep a limit to the amount of
22 kids and the amount of noise.

23 Clearly, there's going to be some noise
24 and we acknowledge that and we feel like the greater
25 good of serving 40 children in the neighborhood and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 providing after school or early childhood development
2 services is a large gain for the neighborhood and that
3 some incremental noise increase is part of that
4 package. And we have wrestled with how to mitigate
5 that as much as possible on the design side with the
6 fencing that goes around and any kind of sound
7 limiting design that we can, but we realize we can't
8 design out all noise.

9 You know, it sort of points to one of the
10 challenges of owning and operating and living in urban
11 multi-family buildings. There are needs of all. You
12 know, the Beverly Court families and people have
13 needs. The Jubilee residents have needs. The Glen
14 Arms on the backside have needs and we're all pressed
15 into each other tightly, so we will do the best we can
16 to mitigate the noise.

17 CHAIRPERSON GRIFFIS: Excellent. Follow-
18 up?

19 VICE CHAIR MILLER: Yes, I think this is
20 my last question. In your testimony you made
21 reference to using playgrounds from an affiliate
22 organization. How real is that? Can you be more
23 specific?

24 MR. KNIGHT: The opportunity is very real.
25 The degree of planning and the degree of coordination

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is just at its beginning stages. The other property,
2 Jubilee Housing owns the other playground. There will
3 be no difficulty with permission to use the space.
4 But I'm trying not to have the written record
5 prescribe what the program use would turn out to be
6 for the kids and let the program staff determine
7 what's in the best interest of the kids over the life
8 of the project.

9 In talking with the Board about Jump
10 Start, they know they want to use Meridian Hill. They
11 know they want to use the other Jubilee property.
12 Adams Morgan is a neat neighborhood. They want to go
13 on field trips. They want to walk around the
14 neighborhood. There will be outside activities that
15 don't take place on the site.

16 Please, keep in mind that the way the
17 program uses are segmented, you are not talking about
18 more than 12 kids of an age group or 16 of an age
19 group at any one time in any one use. And if those
20 numbers prove to be too large, then they can be
21 subdivided so -- from a programmatic standpoint, with
22 guidelines and policies and procedures.

23 So those things have not been fully
24 developed, but these issues are on the radar and will
25 be considered deeply in that process.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR MILLER: I did say that was my
2 last one, but that other Jubilee House, is that in
3 walking distance?

4 MR. KNIGHT: Yes, indeed.

5 VICE CHAIR MILLER: Okay. Thanks.

6 MR. KNIGHT: There were a few things I had
7 hoped to say that weren't questions yet and I don't
8 know in terms of process. You know, this project has
9 been contemplated for a number of months. Jubilee has
10 been before the ANC on multiple occasions before the
11 Reed-Cooke Association. I have had personal
12 conversations with other neighbors. I don't have
13 record of a call from Beverly Court that I would have
14 happily returned. I would love to reach out to them
15 afterwards.

16 But this has been a fairly public process
17 and our desire is to be a positive part of the
18 neighborhood, to be cooperative and we have been so
19 with most groups and regret that it hasn't happened as
20 well with Beverly Court. I had one more thought that
21 was raised. The biggest thing with the noise is that
22 we will design to the limits of design, so that we
23 mitigate as much as possible and then we'll have
24 programmatic control. We will have staff present. We
25 will have small children for discrete amounts of time

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that will be supervised.

2 It isn't just an all come, all serve
3 playground area. It won't be anybody -- there won't
4 be teenage residents from the building. There won't
5 be anybody but program participants that are using
6 these areas and they will be done so supervised. So
7 every precaution will be taken to mitigate noise.

8 CHAIRPERSON GRIFFIS: Excellent. Any last
9 questions?

10 VICE CHAIR MILLER: I'm sorry. I have one
11 more. Are there residents in the building now that
12 have children that use that area to play in?

13 MR. KNIGHT: Not regularly and I think
14 this is where the prior testimony was getting at.
15 There has been some random use of the space that
16 hasn't proven very effective, because the children
17 often weren't supervised and it would -- and on
18 occasion it was chaotic. And so those spaces aren't
19 used that way any longer and this is -- all of that
20 history has been taken into consideration as we
21 proposed this use.

22 CHAIRPERSON GRIFFIS: Anything else?
23 Good. I'll just go to the notice, because sometimes
24 it isn't always understood of our communication. Of
25 course, our requirements stipulate that you have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 noticed all of the surrounding area in two forms and
2 that is, one, writing letters announcing all of the
3 proceedings and the relief that's required within a
4 200 foot radius. And the second is the posting of the
5 property.

6 My records show in this particular
7 application that you have met those requirements. I
8 would note we have run into this circumstance before
9 and it seems to be this one again that the cooperative
10 not all of the shareholders as it was stated were
11 actually written letters, but rather the managing
12 company, which is, of course, the Tilton-Bernstein
13 Management was given the letter. But just for
14 reference and clarification, I'll turn it over to you
15 for closing remarks then, unless you have any
16 rebuttal.

17 MS. RODDY: No, that was our rebuttal and
18 I'll just conclude. I think that our testimony here
19 today and the application and prehearing submittal
20 that we have provided you demonstrate that the
21 applicant has complied with and has satisfied the
22 variance and special exception standard. And I would
23 just like to reiterate that we do have the unanimous
24 support of the ANC and we have the support of the
25 Office of Planning as well as the District Department

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of Transportation and the Department of Health. And
2 we would request that you approve this application.
3 Thanks.

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you very much. Noting the time, I think we're going
6 to have to set this also for a decision making and
7 we'll set this on which seems to be a very popular
8 day, the 2nd of May, which is our normal --

9 VICE CHAIR MILLER: The day is getting too
10 crowded.

11 CHAIRPERSON GRIFFIS: Not a chance.
12 Additional information, Board Members, I've made notes
13 of a substantial amount of aspects here, but not in
14 specific filings, unless any of you are aware of any
15 others? I might perhaps just request that a very
16 bulleted point outline of the program be set forth
17 and, at that time, we can have -- actually, I would
18 like to hear just briefly about term, but at that
19 point we could have that, but number of teachers and
20 staff, children and their ages, all of this is in the
21 application, but we can leave this open.

22 The one piece that I wasn't clear on, we
23 had an on-site number that you've indicated 12, 12,
24 16, the maximum of 50, why don't we set also an
25 enrollment number for our understanding? That to us

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is often times a more appropriate number to analyze
2 the impact, because that talks about the numbers of
3 people's comings and goings. And a restatement of
4 just of the operating times.

5 I would not mind having something written
6 about the trash program also, the pickups, but also
7 you went into a little bit of detail on what's going
8 to happen in this renovation. Even just simple
9 things. We're not looking for anything complicated,
10 but simple straightforward things, so we have a full
11 understanding. Is there a hose bib right there? Is
12 there an area drain? You know, how is it cleaned?
13 When is it maintained? How does that happen?

14 Is there an enclosure to the street or
15 not? I think a lot of that is clear, but not all of
16 the detail. Outside of that, yes, Mr. Jeffries?

17 COMMISSIONER JEFFRIES: Yes, and I would
18 like to see a bit more detail as it relates to how
19 we're going to treat these top lots that are towards
20 the back in terms of materials, different materials
21 that could help, you know, deafen some of the noise or
22 help bring the noise level down. I think the
23 architect talked about vines and things of that sort.
24 I would just like some more delineation as to how
25 you're going to handle that back area.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay. Excellent
2 point. Anything else? Everybody clear? Ms. Bailey,
3 when would we need that in by?

4 MS. BAILEY: Next Tuesday, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: I think that would
6 work if that's possible. Yes? Okay.

7 MS. BAILEY: Next Tuesday.

8 CHAIRPERSON GRIFFIS: We'll do that.

9 MS. BAILEY: Is the 25th.

10 CHAIRPERSON GRIFFIS: Excellent. And that
11 will give us enough time to get that out. Very well.
12 Anything else then? Are we clear on the dates,
13 submissions? We're going to just have you address
14 time, if that was a conversation that's already
15 happened.

16 MS. RODDY: Regarding the limit on the
17 approval?

18 CHAIRPERSON GRIFFIS: Sure.

19 MS. RODDY: We would request a 10 year
20 term.

21 CHAIRPERSON GRIFFIS: Okay. Very well.
22 Question?

23 VICE CHAIR MILLER: Do you want to give us
24 any reason for that? Is it, you know, based on your
25 history of the Jubilee or, you know?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. RODDY: Well, the basis for that is
2 that we would request to have the time to have this
3 program started and to have the word reach out to the
4 community and I think that that is, obviously, ample
5 time and I think that given Jubilee's past experience
6 with the community, they have demonstrated that they
7 are a responsible group and that they have provided
8 quality services and that's why we request the 10
9 years. And as a non-profit, it does become something
10 of a burden and an expense to come through this
11 process for them.

12 VICE CHAIR MILLER: Thank you.

13 CHAIRPERSON GRIFFIS: Good. We'll take it
14 under advisement. Excellent. Anything else? Great.
15 Thank you all very much. We do appreciate it. Whew.
16 We're going to take a five minute recess and we'll
17 resume.

18 (Whereupon, at 12:59 p.m. a recess until
19 1:15 p.m.)

20 CHAIRPERSON GRIFFIS: Very well. Let's
21 resume. As is not often the case, I need to do a
22 major update to everyone that is here and to make sure
23 everyone understands where we are with our schedule.
24 First of all, we do and we are still in our morning
25 session. We have one more case to complete in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 morning. What I am going to do now, however, is take
2 up two preliminary matters attendant to the afternoon
3 session and I'm certainly hoping that all those
4 participants are here for that, which leaves the last
5 case for the afternoon, which I would like to assess
6 and I will pull it up here.

7 I would imagine we wouldn't be calling our
8 afternoon session to order to hear the case until 3:00
9 this afternoon. With that, I will go through, first,
10 we have a withdrawal from 17449, and Ms. Bailey will
11 correct me on all of these, which is an Appeal of the
12 ANC-1C.

13 Let me ask though if the applicant for
14 17457, 3DG is present? If you wouldn't mind coming
15 forward, sir? At this time, I'm just going to have
16 you state your name and address for the record.

17 MR. GOLDMAN: John Goldman.

18 CHAIRPERSON GRIFFIS: If you wouldn't mind
19 touching the microphone, there's a base -- excellent.

20 MR. GOLDMAN: John Goldman, 5025 Garfield
21 Street, N.W., Washington, D.C 20016.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you very much, Mr. Goldman. I understand in your
24 written submission, which is Exhibit No. 21, that you
25 are dramatically changing the program and design of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 your project?

2 MR. GOLDMAN: That's correct.

3 CHAIRPERSON GRIFFIS: And you are
4 assessing that that may, in fact, change the relief
5 that's required. Is that right?

6 MR. GOLDMAN: That is correct.

7 CHAIRPERSON GRIFFIS: Okay. Board
8 Members, questions? Is the ANC represented on this
9 case today? Is the ANC present? ANC-1A? Not noting.
10 Is anyone else here present for 17457? A show of
11 hands? Not noting anyone present, questions, concerns
12 about changing the date on this, a continuance? Very
13 well. Mr. Moy, would you assist us in picking a date?

14 MR. MOY: I believe -- did the applicant
15 request a date? In your submission, did you --

16 MR. GOLDMAN: 60 days.

17 MR. MOY: 60 days. Mr. Chairman, the --
18 we have a possible opening on June 27th, assuming that
19 -- because there is a case in the afternoon that's
20 going to be asking for a postponement, so that's an
21 opportunity to have a slot opening there. That's one
22 option.

23 CHAIRPERSON GRIFFIS: 27th of June?

24 MR. GOLDMAN: Yes, that will be fine.

25 Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Mr. Jeffries, your
2 availability?

3 COMMISSIONER JEFFRIES: Yes, it's a long
4 time.

5 CHAIRPERSON GRIFFIS: Other than that, I
6 would move to the 25th. Let's do that, we'll set that
7 as the first case in the afternoon on the 27th. Is
8 that correct?

9 MR. MOY: That's correct, sir.

10 CHAIRPERSON GRIFFIS: Very well. The 27th
11 of June, we'll see you then.

12 MR. GOLDMAN: Thank you very much.

13 CHAIRPERSON GRIFFIS: Obviously, if there
14 is any way, we would appreciate the updated requests.
15 We would ask for the same if you are not prepared to
16 go at that time. We would certainly take it up at
17 that time knowing well that the program is changing.
18 We would look, obviously, to the other coordination
19 with the Office of Planning and such. That being
20 said, we'll see you then.

21 MR. GOLDMAN: Thank you very much.

22 CHAIRPERSON GRIFFIS: Thank you very much.
23 Ms. Bailey, is there any other official business for
24 the Board in preliminary matters in the afternoon
25 session? I don't think we need to take any action on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the withdraw of the appeal. Is that correct?

2 MS. BAILEY: No, Mr. Chairman, no action
3 is needed. I'm not sure, did you call for the ANC
4 person and he's not here?

5 CHAIRPERSON GRIFFIS: I did not, actually,
6 but is the ANC regarding the appeal present, which is
7 also in Ward 1? Mr. Roth, is he present? Not noting
8 any ANC member that is present, 1C, I believe we can
9 move ahead then. That takes care of the preliminary
10 matters for the afternoon session.

11 And, again, let me just make note we do
12 have the last case of the -- Ney, 17446 and I do
13 apologize, but we are going to be substantially
14 delayed in calling that, but we'll get to it, I would
15 anticipate, approximately, at about 3:00. Right.

16 With that then let's call up as quickly as
17 possible the last case of the morning.

18 MS. BAILEY: And that is the Brookland
19 Union Baptist Church, Application No. 17454, pursuant
20 to 11 DCMR 3104.1, for a special exception to
21 establish an accessory parking lot, that is 24 spaces,
22 serving a church under section 214 and 2116.5, and
23 pursuant to 11 DCMR 3103.2, a variance to allow
24 accessory parking spaces to be located over 200 feet
25 from the principal church use under subsection 214.3.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The property is zoned R-1-B and it's located at 1419
2 Jackson Street, N.E., Square 4015, Lot 30.

3 CHAIRPERSON GRIFFIS: Excellent. Good
4 afternoon.

5 PASTOR MALLOY: Good afternoon. Good
6 afternoon, Mr. Chairman and Members of the Board.

7 CHAIRPERSON GRIFFIS: Your microphone
8 needs to be on.

9 PASTOR MALLOY: Is it on?

10 CHAIRPERSON GRIFFIS: Yes.

11 PASTOR MALLOY: Oh. Mr. Chairman, Members
12 of the Board and to all those who are assembled here
13 this afternoon, we do come before you. I am the
14 pastor, C. J. Malloy, Jr., of the Brookland Union
15 Baptist Church. I came to this mission church for --

16 CHAIRPERSON GRIFFIS: Okay. I'm sorry to
17 interrupt you. Before you go too far into your
18 opening statement, I just need you to introduce
19 yourself with name and address and then we have a
20 preliminary matter in this case, which is to establish
21 parties. We have several requests for party status,
22 so I just need to know and put you both on the record
23 so we can do the same.

24 PASTOR MALLOY: All right. C. J. Malloy,
25 Jr., 3101 14th Street, N.E., Washington, D.C. As I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 indicated, I am the pastor of the Brookland Union
2 Baptist Church.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you.

5 MR. LANIER: I am James R. Lanier, 4708
6 8th Street, N.E., Washington, D.C. 20017. I am the
7 chairman of the board of trustees.

8 CHAIRPERSON GRIFFIS: Excellent. Welcome
9 both and let's get through the preliminary matters
10 immediately. I'm going to need some help with the
11 pronunciation of this, but it's Percy Jernigan.

12 UNIDENTIFIED SPEAKER: Jernigan.

13 CHAIRPERSON GRIFFIS: Jernigan?

14 UNIDENTIFIED SPEAKER: He's not present.

15 CHAIRPERSON GRIFFIS: Not present. Okay.
16 And Michelle Sedgewick?

17 MS. SEDGEWICK: Present.

18 CHAIRPERSON GRIFFIS: Okay. And Mr.
19 Wilhelm?

20 MR. VON FLECKENSTEIN: Fritz von
21 Fleckenstein, right?

22 CHAIRPERSON GRIFFIS: Yes.

23 UNIDENTIFIED SPEAKER: Say that again,
24 please.

25 CHAIRPERSON GRIFFIS: How do you even say?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Fritz Wilhelm von Fleckenstein.

2 MR. VON FLECKENSTEIN: Yes.

3 CHAIRPERSON GRIFFIS: Full name. Okay.

4 And then we have McKay.

5 MR. MCKAY: Present.

6 CHAIRPERSON GRIFFIS: Indeed. And then
7 Mr. McKay has both of these. That is what I have
8 presently. Yes?

9 VICE CHAIR MILLER: King?

10 CHAIRPERSON GRIFFIS: Oh, I don't have
11 that.

12 VICE CHAIR MILLER: Do you have Ms. King?

13 UNIDENTIFIED SPEAKER: Ms. King.

14 CHAIRPERSON GRIFFIS: Let me pull that.
15 Ms. King?

16 UNIDENTIFIED SPEAKER: She's not present.

17 CHAIRPERSON GRIFFIS: Not present. Okay.

18 It was late? Okay. I think we wouldn't take then the
19 King request for party status at this time. Let's
20 move down to the rest. First of all, let me just ask.
21 We do have Exhibit 25 which is of the group of
22 Concerned Neighbors of Brookland Union Baptist Church,
23 Exhibit 25.

24 What I would like to ask is if Mr. --
25 well, if any of the other four are not part of that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 group, what would make -- what is the unique element
2 that we are to be looking at in terms of their
3 representation as a party? And I say it for this
4 particular reason.

5 There is obviously two very important ways
6 that one can participate, as a person and provide
7 testimony and then as a higher threshold and that is
8 as a party. And in order to be granted party status,
9 you all know you put in a request. However, there are
10 certain questions that you have to answer and meet
11 that threshold.

12 As a party you are, of course, a full
13 participant in this case just like the applicant. You
14 are going to be given the opportunity to cross
15 examine. You are also going to be given the
16 opportunity and obligation to present an entire case.
17 Any additional information that the Board would like
18 and would request of the applicant we will request of
19 the parties, so that may well get into the fact of
20 additional submissions, maybe some legal analysis of
21 sorts.

22 The important aspect for us in the
23 participation established and the party status is that
24 we have a cohesive and efficient presentation of
25 positions. We won't allow redundant positions and it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 certainly wouldn't be productive. So I say that. Let
2 me ask all of those that have requested party status
3 if you would come forward. We can have a seat and
4 answer very quickly.

5 The first question, of course, would be
6 are you wanting to and are you able to join the larger
7 party? Mr. McKay, I am taking some liberty in
8 assuming that you will take all these on, but let me
9 hear from all those that have requested party status.
10 How are we doing on chairs? Good.

11 Let's start with you, Ms. Sedgewick.
12 You're at the mike. If you wouldn't mind just
13 touching the button there. Are you wanting to
14 maintain your independent request for party status?

15 MS. SEDGEWICK: I think I can speak on
16 behalf of everyone who has filed an individual
17 application. If the Board is inclined to grant party
18 status to the group, I don't know that any of us would
19 object to proceeding that way.

20 CHAIRPERSON GRIFFIS: Okay.

21 COURT REPORTER: Please, state your name.

22 MS. SEDGEWICK: My name is Michelle
23 Sedgewick. I live at 1431 Jackson Street, N.E.

24 MR. VON FLECKENSTEIN: Fritz von
25 Fleckenstein, 3109 14th Street, N.E. I also have no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 objection to being folded into the group.

2 CHAIRPERSON GRIFFIS: Okay. Excellent.
3 Mr. McKay, any difficulty in that?

4 MR. MCKAY: No, we have no difficulty at
5 all.

6 CHAIRPERSON GRIFFIS: Excellent. I think
7 it's perfectly appropriate, in fact, and outlined in
8 all the submissions and the elements that are brought
9 up, they are fairly redundant and I think that makes
10 it very efficient. Of course, it will be up to you on
11 how you want to present the case and the information
12 and as long as we're in a cohesive situation, I think
13 that would be great. For cross examination we're
14 going to ask that just one person cross each of the
15 witnesses as they come forward and we'll leave it at
16 that.

17 That being said then, we have a single and
18 combined request for party status. The last question,
19 Mr. McKay, you had noted that there were certain
20 attachments to your filing. Have we now received
21 that?

22 MR. MCKAY: Well, these are they and I
23 didn't have a chance to make the attachments, but
24 these are they.

25 CHAIRPERSON GRIFFIS: Okay. So we don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have it in the record yet?

2 MR. MCKAY: No, you don't have it in the
3 record.

4 CHAIRPERSON GRIFFIS: That's fine. I just
5 wanted to make sure our file was complete for what we
6 were looking at. Let me hear from the applicant if
7 they have any position on the request for party status
8 of the Concerned Neighbors of the Brookland Union
9 Baptist Church.

10 PASTOR MALLOY: None.

11 CHAIRPERSON GRIFFIS: No position in
12 opposition or in support?

13 PASTOR MALLOY: We have support.

14 CHAIRPERSON GRIFFIS: No, I'm sorry, it's
15 just for this party status application, if you had an
16 opinion of whether we should grant or not grant the
17 party status to them.

18 PASTOR MALLOY: Well, I have no objection
19 that they have the status, whatever the process is.

20 CHAIRPERSON GRIFFIS: Okay. Okay. Good.
21 We appreciate that.

22 PASTOR MALLOY: We respect their right.

23 CHAIRPERSON GRIFFIS: Indeed. Thank you.

24 And the ANC, the ANC is present. Is that correct?

25 Indeed. And did you want to speak to the request for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 party status?

2 UNIDENTIFIED SPEAKER: I have no
3 objection.

4 CHAIRPERSON GRIFFIS: Okay. Very well.
5 ANC-2D. We'll have you introduce yourself for the
6 record hopefully momentarily, but note that the ANC-2D
7 has taken no objection to the request for party
8 status.

9 Board Members, I would ask you if you
10 would have any questions. Mr. McKay would be open to
11 any questions and detail on his request for party
12 status.

13 There being no immediate questions of Mr.
14 McKay, I would outline the fact and what I have said
15 in almost all, if not all, of the requests for party
16 status, the most critical and pivotal piece for me in
17 the request and the answering is Question No. 6 and
18 that explains how the requestor would be distinctly
19 and uniquely impacted if the relief was granted as
20 sought.

21 I think it's very clear that the combined
22 Concerned Neighbors have shown, they have raised
23 numerous elements, but clearly the impact is adjacency
24 to the site in question, and we will get into all of
25 their other elements as they have brought them up.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 With that, I would have no opposition and would
2 support granting the party status of the Concerned
3 Neighbors of Brookland Union Baptist Church as
4 represented by Mr. McKay unless there are -- and let
5 me hear from any others.

6 Is there any opposition to granting party
7 status? Not noting any opposition from the Board, we
8 can establish the party, Mr. McKay representing, and
9 all those obviously have been folded in. We thank you
10 very much. You can have a seat. We're going to have
11 the presentation of the case in chief. We will go to
12 Government reports and then we will go to the party in
13 opposition's case presentation. With that now, we can
14 have your opening remarks, sir.

15 PASTOR MALLOY: All right. Thank you. I
16 indicated I came to the Brookland Union Baptist Church
17 as pastor in the year 2002 and immediately we
18 recognized the fact that we had some numerical growth.
19 And so we have made plans to do some church expansion.
20 We are going to have additional classroom space. We
21 need an elevator. We need other kinds of things in
22 our church building. And as a result of the increase
23 in membership, also that necessitated additional
24 parking.

25 Prior to my coming, there had been the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 purchase of property on Jackson Street of two lots and
2 when I got there, there was a condemned house on that
3 property that was boarded up, weeds all around and I
4 didn't know it belonged to the church. And when I
5 made the inquiry I found out that the church did own
6 that particular property, and I said we need to do
7 something about it. We need to clean up the area.

8 We need to fix it up and we're going to
9 have either one or two choices. Either we will try to
10 build a home on that property or get parking
11 facilities. Well, the cost of erecting a house on
12 that particular property was very expensive, so we
13 went through the process of going through all of the
14 estimates and the things that need to be done. And
15 then we decided that we would go with the parking lot
16 idea.

17 Of course, the neighbors in the local area
18 were opposed to the parking lot idea. They expressed
19 that to us. We had several meetings together and we
20 tried to come to some resolution with respect to that
21 particular request. But we finally had to move on
22 with what we had, and so we went through the process
23 of going through the channels, of going through the
24 Department of Consumer and Regulatory Affairs, Health
25 Department, whatever needed to be done.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We tried to be in compliance. We got
2 permits and every time we got a permit, we would have
3 opposition to what was taking place and the permits
4 would be taken down. And then an inspector would come
5 out and charge us. They would cite us for not having
6 a permit. We would have to go before the
7 administrative judge and in many cases it was thrown
8 out by the judge and this just went on.

9 This has been going on for, as I said,
10 several years. We got to the point that we finally
11 got to the position of being able to just clear the
12 property. We had heard reports that there was a lot
13 of illicit activity going on, drug activity taking
14 place on the lot, prostitution, all kinds of things
15 that were not acceptable to anybody in a community.

16 So we were instructed to put a fence up.
17 We put the fence up. We tore down that house and we
18 started the process of leveling it and trying to
19 construct a space for our parking. Well, that reached
20 objection. We thought that we had cleared all the
21 channels by going through the various offices with the
22 DCRA. We thought that we had everything in accordance
23 with the instruction that we had. We hired engineers.
24 We paid thousands of dollars to have all of these
25 things put in place.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 They gave us instructions about what space
2 to be used, what we could do, what we could not do,
3 and so we tried to follow everything to the letter of
4 the law. We thought we were doing it perfectly well.
5 We wanted to be in compliance. We wanted to do
6 everything absolutely right.

7 And so it got to the point, in fact last
8 year I think it was, that we did have a hearing before
9 the BZA and our contractor came, but we were not
10 informed as a church that the meeting had taken place
11 on a certain date and, therefore, we were not present.
12 We were not here for that occasion, so we had to
13 reapply, and so we reapplied through the whole process
14 of getting the documents and the permits and all of
15 the necessary paperwork in order to come back before
16 the BZA.

17 And so that is where we are at this point.
18 And, again, we want to do everything proper, right and
19 in the manner in which it should be. We thought we
20 were doing that. In fact, so the last meeting that we
21 had with the neighbors within our community and in our
22 area, we tried to come to a compromise. We tried to
23 come to a point where we said now, what can we do?

24 Seemingly, what I got in terms of
25 impressions and information was that the site was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ugly. They did not like the fence that was around the
2 property. They just didn't want a parking lot at all.
3 And we said, well, we'll do anything we can to
4 beautify it. We'll landscape it. We will put flowers
5 out there. We have contacted the Watershed Division.
6 We contacted Casey Trees. They are going to do all of
7 this for us. They are going to give us the
8 landscaping. We will conceal the fence. We will do
9 anything to make everybody happy.

10 As the previous group that was up here
11 said, we want to be good neighbors. We are a mission
12 outreach church. We do things for helping people.
13 That is our purpose. We're not here to destroy. We
14 don't want to cause friction. We want to have a good
15 relationship in terms of what we do. We give
16 generously to causes. We support tsunamis. We
17 support the Katrina Relief Fund. We support all
18 missions.

19 CHAIRPERSON GRIFFIS: Good.

20 PASTOR MALLOY: You just name it, we do
21 it.

22 CHAIRPERSON GRIFFIS: Indeed. And let's
23 be absolutely clear. You're not here in judgment.
24 Certainly, the Board is not going to pass whether
25 you're good or not or serving --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 PASTOR MALLOY: All right.

2 CHAIRPERSON GRIFFIS: We're sticking to,
3 as I said before, these boring issues of zoning.

4 PASTOR MALLOY: Zoning. All right.

5 CHAIRPERSON GRIFFIS: So we can get right
6 into section 214, because what we're talking about
7 here is accessory parking spaces or a parking lot, as
8 perhaps you're assessing it. And what I want you to
9 do is talk specifically to the special exception
10 because -- well, and also the variance, because we
11 don't have a lot of information from you in the
12 record.

13 PASTOR MALLOY: About our --

14 CHAIRPERSON GRIFFIS: Your case
15 presentation. Maybe I have mistaken. Have you
16 submitted a prehearing statement?

17 PASTOR MALLOY: We submitted and I had a
18 document with respect to -- and I thought it was on
19 the application itself, for a special exception to
20 allow accessory parking spaces for an existing church
21 located at 1419 Jackson Street, N.E. We thought that
22 was the case.

23 Now, this is across from an alley from our
24 church, which is less than 200 feet, and it was my
25 understanding and I thought that there was a law back

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in 2000 known as the Religious Land Use and
2 Institutionalized Persons Act. It says that it bars
3 Government from enforcing zoning codes that imposes a
4 substantial burden on religious assembly, and I
5 thought that we would fit under that category.

6 CHAIRPERSON GRIFFIS: And what would that
7 entitle you to?

8 PASTOR MALLOY: To that parking space
9 because of the number of members that we have, and
10 also the location and distance from our church.

11 CHAIRPERSON GRIFFIS: So you would be
12 exempt from zoning based on that?

13 PASTOR MALLOY: That was the information
14 that was given to me.

15 CHAIRPERSON GRIFFIS: >From who?

16 PASTOR MALLOY: From some official from
17 the --

18 UNIDENTIFIED SPEAKER: DCRA.

19 PASTOR MALLOY: -- DCRA.

20 CHAIRPERSON GRIFFIS: Indeed.

21 PASTOR MALLOY: I don't remember the
22 names.

23 CHAIRPERSON GRIFFIS: Sure, sure.

24 PASTOR MALLOY: As I said, we tried to be
25 in compliance with this.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Actually, I don't
2 want to know, but why don't we have that cite if you
3 have a copy of that?

4 PASTOR MALLOY: Really, this -- it was a
5 2000 law known as the Religious Land Use and
6 Institutionalized Persons Act.

7 CHAIRPERSON GRIFFIS: Does it have a
8 number beside it?

9 PASTOR MALLOY: Oh, no, it didn't have a
10 number beside it. I just have the information.

11 CHAIRPERSON GRIFFIS: What jurisdiction or
12 what law is it?

13 PASTOR MALLOY: I have no idea, sir. I'm
14 just a country preacher not knowing what these aspects
15 are. I came to your great city, you know, from North
16 Carolina and so I don't know all of these
17 ramifications.

18 CHAIRPERSON GRIFFIS: Indeed.

19 PASTOR MALLOY: But it's just that if we
20 were going to have some necessary space, we thought
21 that this would be acceptable and, certainly, parking
22 is an issue --

23 CHAIRPERSON GRIFFIS: Sure.

24 PASTOR MALLOY: -- in the District of
25 Columbia.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Country, city, we
2 all have the same regulations, so we're going to walk
3 you through all of the requirements and, of course,
4 you're going to have to come up to meet. Otherwise,
5 our hands are clearly tied in any direction that we
6 need to go. 214 is going to need to be satisfied,
7 that's the special exception, and also 2116.5 which is
8 the variance.

9 The variance is to allow the accessory
10 parking spaces to be located over a 200 foot
11 dimension. So in order to understand what is being
12 asked of you, a variance is you need to show how you
13 are or how this situation is unique, whether it be the
14 land, the history, the use. There is some uniqueness
15 to this aspect. And out of that uniqueness it is
16 practical difficult to comply fully with the Zoning
17 Regulations, and the Zoning Regulations, of course,
18 would require you to put the parking on your own site.

19 And in that and after all that has been
20 established, the Board will need to be shown why this
21 would not be in -- how do I say, how it wouldn't
22 impair the intent and integrity of the Zone Plan or
23 Map, but what does that mean? Why this wouldn't be
24 different or way outside of what the zoning actually
25 allows.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And this is an R-1-B District and so that
2 is a very low density residential district. And then
3 on top of all that, would this impair the public good?
4 Would this go against the public good or serving this
5 specific or the entire area?

6 PASTOR MALLOY: Mr. Griffis, when I went
7 through what I would consider the first step, through
8 DCRA, and asked what do we need to get to the
9 completion of this parking lot idea, that's where they
10 would -- some official would give me a plan and say,
11 well, you need an engineer.

12 CHAIRPERSON GRIFFIS: Sure.

13 PASTOR MALLOY: We brought in the
14 engineer.

15 CHAIRPERSON GRIFFIS: Sure.

16 PASTOR MALLOY: He gave us a -- we had
17 that plan. We had all that offered out and laid on
18 the table.

19 CHAIRPERSON GRIFFIS: Okay.

20 PASTOR MALLOY: Then after the engineer,
21 we had to meet all those needs in terms of soil
22 erosion or whatever, all these things that go into
23 this planning.

24 CHAIRPERSON GRIFFIS: Sure.

25 PASTOR MALLOY: We went through all these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 various departments and we thought that we had done
2 that legitimately and properly. That's why I say
3 that's where the confusion comes in. I thought
4 everything was in order. So when we go down and make
5 an application to get a permit to do whatever we had
6 to do, even to put up a fence we had to have a permit.
7 To landscape, you get a permit, all of these things.

8 We followed the process to the letter of
9 the law. And then when it came to the point where
10 come to BZA, you know, get your application, give all
11 these, this background information, this whole packet,
12 we laid that out. So then I come down here or on
13 today saying, well, I thought that we had met all of
14 the qualifications that we were in the right step, the
15 right direction.

16 CHAIRPERSON GRIFFIS: You're in the right
17 place.

18 PASTOR MALLOY: All right. And so I'm
19 just looking now for what we would call approval of
20 our request to have parking less than 200 feet from
21 our church on the property located at 1419 Jackson
22 Street, N.E.

23 CHAIRPERSON GRIFFIS: Okay. Are you in
24 receipt of a copy of the Office of Planning's report
25 attendant to this application?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. LANIER: No, we're not.

2 PASTOR MALLOY: No, sir.

3 MR. LANIER: No, we're not.

4 CHAIRPERSON GRIFFIS: You haven't seen the
5 office -- have you had discussions with the Office of
6 Planning?

7 PASTOR MALLOY: I have not, have you?

8 MR. LANIER: I had a conference about two
9 weeks ago with a Ms. Karen Thomas. I think she's in
10 the Office of Planning. Is Ms. Thomas in the Office
11 of Planning? Yes, there she is.

12 CHAIRPERSON GRIFFIS: Okay. Maybe we go
13 about this a different direction or perhaps this isn't
14 ready to go today or maybe it is. Are you aware of
15 the opposition and their concerns?

16 PASTOR MALLOY: Oh, yes, sir.

17 CHAIRPERSON GRIFFIS: Well, why don't we--

18 PASTOR MALLOY: Yes, sir.

19 CHAIRPERSON GRIFFIS: Why don't we start
20 with that and how your application would address that,
21 because actually it goes well into what the
22 requirements are under special exception that you
23 would have to -- and I would ask you also. The Office
24 of Planning has in their over 10 page analysis, double
25 sided, included the Department of Transportation's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 comments and I believe these were from the previous
2 case, which again gives me a little pause. You have
3 been here before.

4 PASTOR MALLOY: No, I have not been here.

5 CHAIRPERSON GRIFFIS: I understand, but
6 the applicant is the same. But be that as it may,
7 that doesn't matter. There is an entrance and exit to
8 the lot that is of concern to DDOT. There is a
9 handicap ramp access of 3 foot wide that is also of
10 great concern. They have indicated that there is a
11 potential vehicular/pedestrian conflict with the
12 screening. They suggest that you show more than 5
13 percent landscaping on the site, and you have
14 indicated that you have some idea and you have done
15 some work with some --

16 PASTOR MALLOY: Casey Trees.

17 CHAIRPERSON GRIFFIS: -- storm, right,
18 storm water management and things.

19 PASTOR MALLOY: Storm water management.

20 CHAIRPERSON GRIFFIS: But do we have a
21 plan of any of that or showing any of it?

22 PASTOR MALLOY: I did fax a copy of the
23 plan from the Department of Health to Office of
24 Planning and I just recently, two days ago, got a
25 letter from Casey Trees about their landscaping

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 development. Again, all of this is coming in on me
2 because we're just trying to be in compliance.

3 CHAIRPERSON GRIFFIS: I understand that
4 and I'm trying to assist you in that, because today is
5 the day. Today is the day that you pull all of that
6 information together and provide it to the Board and
7 I'm in a bit of a quandary, because I don't think
8 we're really ready to get too far into this.

9 BOARD MEMBER ETHERLY: I would agree, Mr.
10 Chair. Perhaps it's useful just to pause for a moment
11 and kind of just assess where I think we are. The
12 Office of Planning report, Pastor Malloy, is very
13 detailed as to the types of questions that need to be
14 answered in order for you to get the relief that
15 you're seeking.

16 I think it's very important, as the Chair
17 noted, that this forum, this proceeding, is definitely
18 not about passing judgment on the church's need for a
19 parking lot, passing judgment on the church's programs
20 or operations. That definitely has no place here.
21 And, clearly, it may be the case that you do need some
22 parking relief, as do many churches in the city.

23 The concern that I hope you're beginning
24 to hear is, however, there is not a lot of detail that
25 has been provided on behalf of the church relative to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a number of the questions that have been raised, most
2 importantly by the Office of Planning, by the
3 Department of Transportation and, as you will hear, as
4 you probably are anticipating, by the parties in
5 opposition.

6 My concern is, and this is not necessarily
7 a comment for reply from you, but my concern for my
8 colleagues is, as you indicated, Mr. Chair, whether or
9 not we are at this point right to move forward,
10 because there are a couple of different ways we could
11 do this. The Office of Planning report, which you
12 have been handed, sets some very clear questions out
13 for the church's consideration and response to. And,
14 at this point, I don't think the record is complete
15 enough with answers to all of those questions.

16 Now, we could conceivably, utilizing the
17 Office of Planning's report as a guidepost, walk you
18 through that today, but my concern with that course of
19 action would be whether or not the church is
20 adequately positioned to protect or ensure its own
21 interest. I mean, speaking in all candor, you
22 probably need an attorney to assist you in walking
23 through this.

24 And my fear is that if you don't have
25 that, which is of course your right to do, but if you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 don't have that, you're going to be in a somewhat
2 tough position because the questions that are laid out
3 in the report are very, very clear and very detailed.
4 And, at this point, not taking liberties to speak for
5 my colleagues, but the record is fairly thin on some
6 very particular issues, issues that you may very well
7 be able to speak to today off of the cuff.

8 But as we get into issues around runoff,
9 as we get into issues around pavement, as we get into
10 issues around handicapped accessibility, which of
11 course are all important concerns for you and your
12 members, not having the benefit of counsel to help you
13 walk through those complicated questions could be a
14 concern in terms of your ability to adequately make
15 your case.

16 So that is a concern that I have, Mr.
17 Chair. If you are desirous of still moving forward
18 today, the Office of Planning report is going to be,
19 at this point, the best document that we have in our
20 possession around where your case is. And if that's
21 the best, at this point, articulation, I would be very
22 concerned about whether or not you would be able to
23 make your case today.

24 So, in essence, Mr. Chair, it perhaps is
25 unusual for us to be put in this kind of position of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 offering what is fairly close to advice and guidance,
2 but we have a couple of options. We have a walk
3 through the department. We walk through the Office of
4 Planning report. There are a lot of questions that
5 that report lays out which have not yet been answered.
6 You can try to answer those questions today. That's
7 number one.

8 We could do that. Then, of course, we
9 have the party in opposition which is going to go
10 through a very detailed analysis of their concerns
11 about your application as it is proposed, and then of
12 course the rest of the case including the ANC report
13 and the Office of Planning report. But that is a lot
14 to go through without, again, fear that you just don't
15 have an adequate record that you have developed on
16 behalf of the church, such that the odds are fairly
17 heavy given these questions that are being raised.

18 So that's kind of my comment and
19 observation, Mr. Chair. Again, Pastor Malloy, I'm not
20 asking you for a response to it, but just in terms of
21 kind of where we are. Again, it's an unusual comment
22 perhaps for a Board Member to make, but I'm just not
23 sure if you're ripe and ready to move forward at this
24 point.

25 CHAIRPERSON GRIFFIS: Why wouldn't you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 want a response? I think it's appropriate to get a
2 response to that.

3 BOARD MEMBER ETHERLY: Certainly.

4 PASTOR MALLOY: Well, with respect to what
5 you said, and I want to be wise and I also want to
6 have the best advantage for all parties concerned,
7 when you mentioned the fact that we -- and I noticed
8 in the previous groups, because this is the first time
9 I have ever been here, that they had attorneys. And
10 if we need to get an attorney to review all of this
11 and carry us through this process, so that we can be
12 adequately prepared in this arena, then that's what I
13 want to do.

14 So now, again, I have to ask of you what
15 do I do? Do I ask for a continuance?

16 CHAIRPERSON GRIFFIS: Mr. McKay, do you
17 have a position?

18 MR. MCKAY: Good afternoon. My name is
19 Jammie McKay. I reside at 1400 Jackson Street, N.E.,
20 Washington, D.C. My wife and I, we bought that
21 property in 1972. I am dismayed. I am really
22 dismayed and I'm angered. I'm really angered because
23 this is the third time we have had our time wasted.
24 Okay. And I say that in all due respect to Pastor
25 Malloy and to Brookland Union Baptist Church and to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 its members.

2 From the outset and we still do consider
3 Brookland Union Baptist Church and its members friends
4 of the community, decent people, but we're dismayed at
5 the preparedness in doing the church's work in going
6 into real estate and that is exactly what has happened
7 and that's how we view it.

8 We have dealt with this issue now with the
9 church since 1996 as individuals and individual
10 neighbors in the community over the prospect that a
11 parking lot would be built on a lot, the first lot
12 that the church purchased before it tore it down, tore
13 the building down, the house down.

14 We were concerned back in '96, about this
15 time in '96, and then again as an organized group and
16 we called ourselves the Concerned Neighbors of
17 Brookland Union Baptist Church starting in the summer
18 of 19 -- excuse me, in the summer of 2001. And we
19 were concerned at that time because the church had
20 recently purchased a second lot. Okay?

21 Now, you will recall, Mr. Chairman, and
22 you should recall and you have had many cases, the
23 same kind of response last year twice of
24 unpreparedness of this applicant to do its job.
25 Pastor Malloy states a number of things. Though he

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 may be sincere, he is in great error. He is in great
2 error. He is in great error about the history of his
3 awareness, of the neighbors' concern about the
4 purchase of those lots and the prospect of those lots
5 being used as a parking lot.

6 The pastor before him and officials, they
7 told us a boldface lie, had no intention of putting a
8 parking lot there when we asked them and they told a
9 boldface lie under his leadership and his
10 administration of deacons when we expressed our
11 concern about a parking lot, that we have no intention
12 of putting a parking lot there, but they did it anyway
13 and in your face. We're going to do it. There is
14 nothing you can do about it.

15 When his representative, the contractor,
16 his agent, paid agent, came down here twice, no
17 preparedness whatsoever saying that the pastor was too
18 busy to come down and the deacons. We were dismayed
19 then. Why wouldn't officials of the church be here to
20 represent their interests, what have you?

21 But when this case was dismissed in the
22 second hearing last year in the first case, when it
23 was dismissed the contractor was allowed to make a
24 motion of dismissal. He lied to this Board then
25 saying that the reason we are not prepared and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 reason we have not modified our site plan is because
2 the person in our office, the engineer in this office,
3 is on deployment as a civilian to Iraq, a lie.

4 Now, if that is the case and since that
5 contractor, okay, has worked as an agent for this
6 applicant since that time, since the motion to dismiss
7 was granted in which the parking lot was installed
8 illegally even after this dismissal of their
9 application to have a parking lot in your face, where
10 is the modification? Do you see it in this plan? No.
11 It's the same plan for that matter.

12 And let me just read something briefly
13 that one of our members put together and I thought was
14 very good. We see this as a strange and mysterious
15 tale in dealing with this applicant and what we have
16 had to do with the applicant in the many meetings that
17 we called, we initiated with the church and in great
18 detail, and from the very beginning being a friend to
19 the church and performing in good faith.

20 Our member has written "A charitable
21 institution," and speaking about a strange and
22 mysterious tale where we find ourselves, "A charitable
23 institution ignores its neighbors, lies to and about
24 them, destroys living beings," meaning trees, "and
25 houses in a time of housing shortages. It further

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 refuses to deal with Government officials asking
2 serious questions about an application, sends a
3 contractor to represent it at hearings, but produces
4 no evidence or arguments and, finally, it's forced to
5 withdraw this application.

6 It then states its intention to proceed
7 without a permit and does so. It tore down both those
8 houses without permits, both those houses without
9 permits. It tore them down. Read our record, our
10 documentation in the record that we present. The
11 regulatory agency makes an investigation and
12 subsequently cites this institution. The rest is
13 shrouded in mystery as far as the neighbors are
14 concerned.

15 Instead of swift action to deal with this
16 violation, the case is referred to a mysterious court.
17 They had a hearing in the court for a secret hearing,
18 which is not announced to the public or to the
19 neighbors ourselves who know they were parties to the
20 public hearings or declared not to be parties to this
21 hearing," meaning with the secret court.

22 "The hearing is held in July of last year,
23 but no ruling is handed down. Three months later this
24 local Government representative is told that the judge
25 cannot make a decision and that the community must

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meet with the perpetrator. Now, a new application has
2 been filed, but the work is already finished."

3 They installed an illegal parking lot and
4 they are determined that they are going to have their
5 way and perhaps with another secret court and
6 Government officials for that matter, but you can make
7 it right. Give us justice because we have had
8 injustice and we have had our time wasted and I would
9 not give them another minute.

10 CHAIRPERSON GRIFFIS: Thank you very much.
11 I think that is well-said and, believe me, the Board
12 has read all of that which has been submitted, and I
13 note that what you have read has just been submitted
14 today and we appreciate you bringing it to our
15 attention. I think it was important to get through
16 the chronology of that as I understand you are opposed
17 to granting a continuance, but would move ahead today.
18 Is that correct?

19 MR. MCKAY: We are opposed to it.

20 CHAIRPERSON GRIFFIS: Okay. Response?

21 PASTOR MALLOY: Mr. Chairman?

22 CHAIRPERSON GRIFFIS: Yes?

23 PASTOR MALLOY: And I respect my brother
24 in the faith, but let me say one of the comments that
25 he made when he said that we did certain actions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 without a permit, and I said earlier that everything
2 that we did, we got a permit first from DCRA. I got
3 directors. I have the permits --

4 CHAIRPERSON GRIFFIS: Okay.

5 PASTOR MALLOY: -- on file.

6 CHAIRPERSON GRIFFIS: Okay.

7 PASTOR MALLOY: So, as I said, we tried to
8 do these things according to the law and what did we
9 do? Whatever the process was, whether it was to cut
10 down the trees or to put the fence up, to landscape it
11 or to put down that flower arrangement, we all had --
12 we had permits for those. I have those on record. I
13 have those. And for us to be painted in this light,
14 you know, it looks --

15 CHAIRPERSON GRIFFIS: All right. We're
16 not here to really get into the past history of
17 whether you pulled the correct permits or not. That
18 would be an appeal. You were obviously referred -- as
19 you had gone through to get one of the last permits,
20 you were referred to this Board by the Zoning
21 Administrator, meaning you were not able to get the
22 last permit or a permit that you needed and that's why
23 we're here and that's all we're really concerned with.
24 Yes?

25 MR. LANIER: Mr. Griffis, may I speak to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some of the issues that have been raised? I respect
2 the citizens, the concerned neighbors. I am the
3 chairman of the board and after the parking lot was
4 completed and we were cited, I took it upon myself to
5 try to get this corrected and that is really why we're
6 here today.

7 As Dr. Malloy said, we want to abide by
8 the regulations and we do need some time to answer
9 this, and I ask that you do that so that we can
10 provide the answers that you need that will then allow
11 permission to make --

12 CHAIRPERSON GRIFFIS: But I don't
13 understand how we balance. In other words, you know,
14 we take very seriously granting continuances because
15 of our own schedule. It's very monumental to do that
16 and we have a lot of heads up notice, so to speak, in
17 terms of this. We do have an entire hearing room that
18 is filled today to hear this. I'm not understanding
19 why you wouldn't be prepared today.

20 MR. LANIER: Well, I can explain that. As
21 was just mentioned, we were misrepresented last year.
22 This is news. I had no idea that we had been
23 represented, that you had been convened on our behalf.
24 I was told by the contractor that the permit request
25 had been withdrawn, that, you know, this was -- we had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 already gotten the permit from DCRA. We were shown a
2 permit. It obviously was an unauthentic permit, but
3 we were not --

4 CHAIRPERSON GRIFFIS: Aside from all of
5 that --

6 MR. LANIER: Yes.

7 CHAIRPERSON GRIFFIS: -- what did you
8 think was going to happen today?

9 MR. LANIER: Well, I knew that we were
10 going to appear here today and answer questions. We
11 were going to answer the questions.

12 CHAIRPERSON GRIFFIS: Okay. All right.
13 So you're prepared to answer the questions attendant
14 to your application?

15 MR. LANIER: I didn't -- I'm not -- this
16 document, it's the first time that I'm seeing that.

17 PASTOR MALLOY: When we got these, this
18 last statement, I mean, the last -- from the Board of
19 Zoning, all of this material saying that we had been
20 approved to come before this Board to make our
21 presentation, I thought that was definitely it. We
22 had gone through the steps of going through, as I
23 said.

24 CHAIRPERSON GRIFFIS: Okay. No, I
25 understand that. I understand all that. Here we are.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Comments?

2 VICE CHAIR MILLER: Well, you know, you're
3 here before us as the applicant and you have the
4 burden of proof to meet the test for the relief that
5 you're seeking. So from what we can tell that's in
6 the file was very thin as far as your addressing those
7 tests.

8 Are you prepared to go through those tests
9 today and meet them and address them? If you're not,
10 why aren't you?

11 MR. LANIER: Because I haven't been given
12 anything that says what the test is.

13 VICE CHAIR MILLER: You are the applicant.
14 You applied.

15 CHAIRPERSON GRIFFIS: But you were
16 actually and it's a part of your application. The
17 bottom side of the application that you filled out
18 says that.

19 MR. LANIER: Excuse me. Ms. Miller, one
20 of the head offices at the Department of Health said
21 he did not understand why we did not have the grant or
22 approval for the parking lot facility. From the
23 DCRA --

24 VICE CHAIR MILLER: But let me just --

25 MR. LANIER: -- we had an official who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 told us the same thing.

2 VICE CHAIR MILLER: No, I'm talking about
3 this proceeding. Let me ask you this. Did you have
4 any discussion whatsoever with the Office of Planning?

5 MR. LANIER: The only person I met with
6 recently, as I said, was Ms. Karen Thomas.

7 VICE CHAIR MILLER: Ms. Karen Thomas? Mr.
8 Chairman, could I address a question to Ms. Thomas?

9 CHAIRPERSON GRIFFIS: Ms. Thomas?

10 VICE CHAIR MILLER: Ms. Thomas, the Board
11 is aware that a lot of applicants come before this
12 Board. They are not familiar with the regulations and
13 we're under the impression that the Office of Planning
14 then does let them know what the obligations are, and
15 I'm wondering if you could address what you told this
16 applicant.

17 MS. THOMAS: Good afternoon, Mr. Chairman,
18 Members of the Board. I am Karen Thomas for the
19 Office of Planning. We had several discussions with
20 this applicant concerning this request. I faxed the
21 applicant copies of our previous report, the entire
22 thing. He came to the office and we decided we would
23 go through everything. I said how did you -- you have
24 to show how you meet the test.

25 He has a complete package of the previous

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 application. We told him it wasn't sufficient. We
2 told him he has to go through and meet all these
3 requirements. There was nothing more that we could
4 tell him beyond that.

5 MR. LANIER: Ms. Miller?

6 CHAIRPERSON GRIFFIS: Thank you, Ms.
7 Thomas. Comment on that, Mr. McKay?

8 MS. THOMAS: In addition, I did tell him
9 that he needed a lawyer.

10 CHAIRPERSON GRIFFIS: Okay. Perhaps sage
11 advice.

12 MR. MCKAY: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes?

14 MR. MCKAY: May I comment briefly?

15 CHAIRPERSON GRIFFIS: On her comments?

16 MR. MCKAY: On her comment.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. MCKAY: As well as the question.

19 CHAIRPERSON GRIFFIS: Great.

20 MR. MCKAY: Okay. The Office of Planning
21 report that we speak of and which he has there, and
22 which is in the record for this case, which he is
23 seeing for the first time, is not substantially
24 different from the Office of Planning report that was
25 produced in 2005 which referred to that she faxed him

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a copy of. Not only has she advised him and provided
2 him, but --

3 CHAIRPERSON GRIFFIS: Okay. But we heard.
4 I don't want to get too much of this mudslinging. I
5 want to get to the substance of whether we go today or
6 not. What else can you tell us on your position with
7 that?

8 MR. McKAY: We provided him with the same
9 information. Okay. We, I and other members of our
10 group, over a year ago advised them as to how they
11 have to proceed.

12 CHAIRPERSON GRIFFIS: I see.

13 MR. McKAY: In wanting to put up a parking
14 lot there.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. McKAY: Even when they had Government
17 officials out there --

18 CHAIRPERSON GRIFFIS: Sure.

19 MR. McKAY: -- I advised them no, that is
20 not the case.

21 CHAIRPERSON GRIFFIS: Good.

22 MR. McKAY: I made comments about a
23 lawyer, but I can read something simple.

24 CHAIRPERSON GRIFFIS: Excellent. I
25 appreciate that and I think those are good comments.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think we need to proceed today. We have a special
2 exception from 214. We also have a variance relief
3 from 214.3 and a special exception of 2116.5. What I
4 suggest we do is let's walk through.

5 Office of Planning always does an
6 excellent analysis. They lay the exact test out and
7 all the relief that is required. I think we can walk
8 it through with that as an outline, take up these
9 questions, ask you how you meet them or not and we can
10 move this along, I think, fairly efficiently.

11 We'll have the Office of Planning actually
12 present their analysis, which is different than the
13 Board's, but it's an important aspect and then we'll
14 get into the rest of the party unless there is any
15 other opening statements you wanted to make.

16 MR. LANIER: Well, I have to make one
17 statement.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. LANIER: It's obvious that I'm at a
20 huge disadvantage if we have been advised to have an
21 attorney and I don't have one. I would request that
22 we be given a chance to get an attorney. As the
23 chairman of the board, we will have an attorney.

24 CHAIRPERSON GRIFFIS: Yes. Let's hear
25 from other Board Members. We had heard that. My

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 difficulty --

2 MR. LANIER: You never heard that from me,
3 sir.

4 CHAIRPERSON GRIFFIS: No, I understand
5 that, but my difficulty is how many times we have been
6 prepared to do this. I'm not sure that it's required
7 to have an attorney and I think what you have heard
8 Mr. Etherly say and what I'm proposing to do is
9 actually assist you in directing this. We'll leave
10 the record open, I can't imagine we're deciding this
11 today, if there is follow-up information that we would
12 need. But let me hear from others.

13 VICE CHAIR MILLER: Well, I would just say
14 to that my understanding is that Office of Planning
15 advised you previously that you need an attorney and
16 you chose to appear without one today. So I don't see
17 that as a reason for continuing the hearing today when
18 we weigh it against this is the third time that the
19 community and the Board has come out to hear this
20 case.

21 BOARD MEMBER ETHERLY: I would agree with
22 that direction, Mr. Chair. It's a fairly harsh
23 outcome in response to your request, sir, and I
24 appreciate it, but part of the challenge of this Board
25 is balancing both segments of the community.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Obviously, you're here on behalf of the
2 needs of your church and your congregation and you
3 have a number of members from the community who are
4 here to express their concerns about the proposal, and
5 I think we have to balance the fact that we need to
6 move forward and get some of this done today.

7 So I agree with the Chair's direction that
8 I would encourage that we walk very specifically and
9 in a very directed manner through the Office of
10 Planning report. There are going to be some very
11 clear questions that we will put to you that you
12 should be certain to take very clear note of, and they
13 are going to be very specific questions, not open-
14 ended questions, but very specific questions.

15 And the Board will set out a time frame
16 for you hopefully to provide some documentation and
17 some responses to those issues, and then of course
18 have your pens and papers ready when the opposition
19 case comes forward, because they are going to have
20 some clear issues, too.

21 So I'm ready to proceed, Mr. Chair, with
22 the Office of Planning report as our guideline.

23 CHAIRPERSON GRIFFIS: Excellent.

24 MR. LANIER: Thank you.

25 CHAIRPERSON GRIFFIS: Let's look first

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 then to 214 and actually it goes on page 5 of the
2 Office of Planning's report to follow a little bit.
3 It appears, and we'll walk down quickly, that 214.1
4 indicates the accessory parking elsewhere other than
5 the same lot or part would be the special exception
6 approval. .2 is accessory parking spaces shall be in
7 the open area or underground garage, no portion of
8 which, except for access, shall extend above the level
9 of adjacent finished grade.

10 It's my understanding that this is all
11 open to open air. Is that correct?

12 MR. LANIER: Yes, that is true.

13 CHAIRPERSON GRIFFIS: Okay. Now, 214.3,
14 we need to talk about that because that is actually
15 the variance that is required, because unless you can
16 state that you meet this requirement, accessory
17 parking spaces shall be located in their entirety
18 within 200 feet of the area to which they are
19 accessory.

20 MR. LANIER: That's true.

21 PASTOR MALLOY: Yes.

22 CHAIRPERSON GRIFFIS: It's entirely within
23 200 feet?

24 MR. LANIER: No, no, not the whole lot.

25 CHAIRPERSON GRIFFIS: Okay. And it seems

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that the Office of Planning is also saying that it
2 isn't entirely within 200 feet.

3 So let me ask you just briefly, what is it
4 in this situation that is creating -- that is unique,
5 that is different than other situations in the area or
6 -- and that unique situation, it could be, you know,
7 the topography of the land, whatever it is that makes
8 it difficult to comply with this dimensional
9 requirement.

10 PASTOR MALLOY: This lot backs up to an
11 alleyway. There is no street, no other houses or
12 anything else between the church building and this
13 parking lot facility. I think -- I don't know if you
14 have pictures over there or not of it in your
15 possession, but it just shows -- if you see a picture
16 of the -- it's directly from the back of our church,
17 and so that's an alleyway right there where that
18 picture is taken.

19 In fact, now, if you look straight down
20 the alleyway, we look right in front of Mr. McKay's
21 house, which he is across Jackson Street. So I assume
22 that --

23 CHAIRPERSON GRIFFIS: So separation by
24 alley is the unique aspect?

25 PASTOR MALLOY: There is an alleyway as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you look down that.

2 CHAIRPERSON GRIFFIS: Okay.

3 PASTOR MALLOY: And it crosses over to
4 Jackson Street.

5 MR. LANIER: The alley is an L-shape.

6 CHAIRPERSON GRIFFIS: Okay.

7 PASTOR MALLOY: And so the church sits in
8 a corner and out to the back of it is the parking lot
9 area and with no other, you know, blockage or no other
10 interference or anything else with respect to impeding
11 activity by anybody or anything. We have an entrance
12 way at the front of the gate and an entrance way at
13 the back of the gate, and so you have access and
14 egress from both sides of this particular fence.

15 CHAIRPERSON GRIFFIS: Okay. I think I
16 understand.

17 PASTOR MALLOY: And, again, when the
18 inspectors came out, they looked at it.

19 CHAIRPERSON GRIFFIS: That's okay.

20 PASTOR MALLOY: And they --

21 CHAIRPERSON GRIFFIS: Yes, but --

22 PASTOR MALLOY: They gave approval of it.

23 CHAIRPERSON GRIFFIS: I understand that.
24 They didn't give approval for zoning which is why
25 you're here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 PASTOR MALLOY: Oh, okay.

2 CHAIRPERSON GRIFFIS: But okay. Let's
3 move ahead then. Under 214, I don't know if we need
4 to get into too much else in terms of specifics. I
5 think it will be fully laid out. However, we do need
6 to get into what 214 directs us to, is 2303, which all
7 the provisions of 23 will be complied with. Let's
8 talk about a couple of these.

9 What are you anticipating surfacing the
10 lot with?

11 PASTOR MALLOY: The contractor put some
12 type of gravel on top of -- after it was landscaped
13 because it was just a mud field.

14 CHAIRPERSON GRIFFIS: Okay.

15 PASTOR MALLOY: And so he put some type of
16 gravel that -- I don't know what it's called and to
17 keep the mud --

18 CHAIRPERSON GRIFFIS: So it's finished in
19 terms of what you understand you will surface it with?

20 PASTOR MALLOY: We thought that -- again,
21 that we have the proper --

22 CHAIRPERSON GRIFFIS: No, I'm just asking.
23 Are you anticipating resurfacing it with something
24 different or what's there now is what you're
25 proposing?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 PASTOR MALLOY: Well, if it does not meet
2 the code specification, we will do whatever is
3 required. We will put -- you know, if there is
4 another type of surface that is required or
5 necessitated --

6 CHAIRPERSON GRIFFIS: If you get approved
7 today, does the surface change?

8 PASTOR MALLOY: Sir?

9 MR. LANIER: Yes.

10 CHAIRPERSON GRIFFIS: It does? So what is
11 it changed to?

12 MR. LANIER: To the requirement. We will
13 ask you the requirement and we will meet that.

14 CHAIRPERSON GRIFFIS: Interesting. Okay.
15 I'm going to skip B. I don't know. We'll get to a
16 couple other questions. Do you have any proposed
17 program for cleaning or maintaining the parking lot?
18 Also, are you proposing any lighting on the parking
19 lot?

20 MR. LANIER: No, sir, no lighting.

21 CHAIRPERSON GRIFFIS: Okay. No lighting.

22 PASTOR MALLOY: What we are planning to do
23 basically during church service time and for special
24 events, such as funerals or weddings, we would have
25 the property opened. Remember, at the beginning of my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 presentation I indicated that there have been concerns
2 and complaints about the illicit activity that was
3 going on in that area.

4 CHAIRPERSON GRIFFIS: I know.

5 PASTOR MALLOY: And so as a result, we
6 have avoided all of that. We don't have any --

7 CHAIRPERSON GRIFFIS: Okay.

8 PASTOR MALLOY: -- debris thrown onto the
9 property and all of these kinds of things.

10 CHAIRPERSON GRIFFIS: What are you going
11 to do to keep it free of --

12 PASTOR MALLOY: We have a landscaper. We
13 have hired a person to take care of our property.
14 That person will have the responsibility to fix it.

15 CHAIRPERSON GRIFFIS: So how often are
16 they proposed to be on the parking lot?

17 PASTOR MALLOY: At least twice a month, at
18 least twice a month.

19 CHAIRPERSON GRIFFIS: Every other week.
20 Twice a month. Okay. And you say that there is no
21 illumination for the parking lot.

22 PASTOR MALLOY: No.

23 CHAIRPERSON GRIFFIS: No lighting?

24 PASTOR MALLOY: No, sir.

25 CHAIRPERSON GRIFFIS: Okay. And where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 does your landscaping happen? How are you providing
2 for 5 percent or more of the overall site area to be
3 landscaped, and also how are you defining the edges?
4 What are you putting on the boundaries?

5 PASTOR MALLOY: Well, again, this is where
6 the Casey Tree Foundation came in at the
7 recommendation of the gentleman from the Water
8 Department or Health Department. And he came out, did
9 a survey and gave us the dimensions and the kinds of
10 things that need to be done and we would maintain and
11 keep those trees properly irrigated and maintained or
12 trimmed, whatever it takes, you know, the beauty, to
13 keep the beauty within that particular area.

14 CHAIRPERSON GRIFFIS: Did the Casey Tree
15 talk about the percentage of lot area that would be
16 green or does he talk about the --

17 PASTOR MALLOY: Yes, probably 10 to 15
18 feet trees would be planted all the way around where
19 that fence area is. He said in order to conceal that
20 -- and, in fact, what we may do is take that wire
21 fence down and have just a tree boundary around that
22 lot, again for the appearance sake. And this was a
23 suggestion that came from the Casey Tree engineer and
24 we just got this.

25 CHAIRPERSON GRIFFIS: That 10 to 15 feet

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 barrier is on all sides?

2 PASTOR MALLOY: Right. If you can -- I
3 don't know if you can tell by the picture where there
4 is that little flower bed barrier.

5 CHAIRPERSON GRIFFIS: Yes, but what's --

6 PASTOR MALLOY: It's probably 10 or 15
7 feet already.

8 CHAIRPERSON GRIFFIS: So this in the front
9 is what you're saying?

10 PASTOR MALLOY: All the way around.

11 CHAIRPERSON GRIFFIS: So on all four sides
12 of the parking lot --

13 PASTOR MALLOY: All the way, all four
14 sides.

15 CHAIRPERSON GRIFFIS: -- you would have a
16 10 to 15 foot barrier?

17 PASTOR MALLOY: We're going to have
18 probably a 10 feet barrier to put, you know, this tree
19 growth.

20 CHAIRPERSON GRIFFIS: What is the overall
21 width of the site?

22 PASTOR MALLOY: Sir?

23 CHAIRPERSON GRIFFIS: How wide is the
24 site?

25 PASTOR MALLOY: Oh, gosh, I don't know,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 about the size of a football field.

2 CHAIRPERSON GRIFFIS: All these questions,
3 of course, we're going to need to be answered. So,
4 hopefully, we're taking copious notes so that we can
5 get back to this.

6 MR. MCKAY: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes?

8 MR. MCKAY: The proposal or the regulation
9 calls for a site plan. A site plan is an integrated
10 enterprise, okay, and it's very apparent that the
11 applicant has not thought this through, have not taken
12 a lot of things into consideration and obviously --

13 CHAIRPERSON GRIFFIS: Are you raising an
14 objection?

15 MR. MCKAY: I'm not objecting, but I'm
16 just simply --

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. MCKAY: -- expressing continued
19 dismay.

20 CHAIRPERSON GRIFFIS: Good. Well, let me
21 do this. It's going to be more efficient if we get
22 through this portion.

23 MR. MCKAY: Okay.

24 CHAIRPERSON GRIFFIS: And then I'm going
25 to let you express your dismay or pleasure.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MCKAY: Okay.

2 CHAIRPERSON GRIFFIS: Or whatever you
3 choose to do at that point and then we'll move on. I
4 can assure you that --

5 MR. MCKAY: No problem.

6 CHAIRPERSON GRIFFIS: -- we understand
7 and, in fact, it is part of the requirements that a
8 site plan will be provided. What I want to do is get
9 to the level of detail that we really need, so that we
10 don't have us looking at things that aren't telling
11 the story that needs to be told.

12 So with that, as I said and as I was going
13 to, the questions that were arising are going to need
14 to be answered. So the dimension because conceivably,
15 for me, what I'm looking at is you have just told me
16 that it's a 10 to 15 foot barrier all the way around,
17 which would be a planting box of some sort. Trees and
18 shrubs sounds fabulous. That is taking away 30 feet
19 from each side, conceivably 20 at best, right, and 20
20 from the top. Then we have 20 foot drive aisles and
21 20 foot parking spaces. I want to see how it's
22 actually going to be used or striped.

23 And then our requirement is, and our
24 specific requirement in the regulation, we're not
25 making this up, we have to show whether -- you have to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 show us, you do or you don't, and it's 5 percent of
2 the total area of the parking lot would be green,
3 would be somehow landscaped. So we're just going to
4 need to know what the total site size is and then also
5 that percentage that would be green. Okay.

6 Let's go into other, I think, probably
7 more pertinent questions and that is in the R-1-B
8 Zone, of course, in section 2303.2 it indicates that
9 it has to be screened from adjacent residential areas,
10 right? And so some of the tree are talking about
11 that. Have you had any discussion about putting an
12 actual wall or a brick wall of any sort, a sort of
13 small wall or shrubs or anything of that? It's just
14 landscape is what you are proposing at this point?

15 PASTOR MALLOY: The Casey Tree engineer
16 also indicated that it could be a small wall that
17 could be around the, you know, area.

18 MR. LANIER: We would look at the second
19 block and we'll take what is the best.

20 CHAIRPERSON GRIFFIS: Okay. Where are you
21 proposing to enter and exit in the parking lot?

22 PASTOR MALLOY: At the alleyway there is
23 an entrance or an egress and at the front right on the
24 Jackson Street side there is an entrance way to the
25 property. Through the fence. There are two --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. LANIER: Two gates.

2 PASTOR MALLOY: There's two gates, sir.

3 CHAIRPERSON GRIFFIS: Okay. So one is off
4 the alley and one is off the Jackson Street?

5 PASTOR MALLOY: Off Jackson Street.

6 CHAIRPERSON GRIFFIS: And you pull in and
7 it's just you park on either side as you're coming in
8 and out?

9 PASTOR MALLOY: Right.

10 CHAIRPERSON GRIFFIS: I see. Okay. What
11 else? What else do we need to cover? Mr. Etherly?

12 BOARD MEMBER ETHERLY: Thank you very
13 much, Mr. Chair. I think we've gone through in fairly
14 decent detail working with what we have with the
15 Office of Planning report. I do just want to come
16 back very briefly to the issue that's outlined in
17 section 2303.1(c). It's noted on page 7 of the Office
18 of Planning report at the bottom. There is the issue
19 of, let me phrase the question this way, does the
20 church have any plans or any intentions for any
21 alternative uses of this space, i.e., are you
22 considering or would you like to consider use, any
23 other uses other than a parking lot?

24 Like say, for example, you want to host an
25 outdoor evangelistic ceremony or what have you. Do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you have any plans of that type of that nature, any
2 kind of events that would otherwise happen on this
3 space or is it just for parking?

4 PASTOR MALLOY: Maybe twice a year we
5 might have a cookout or a facility for the youth. For
6 instance --

7 BOARD MEMBER ETHERLY: Well, rather than--

8 PASTOR MALLOY: -- in the past, they have
9 cut off the street and used 14th Street and traffic
10 had to be diverted. Now, in this instance, we won't
11 have to do that. We could have that little activity
12 and we only do that once a year on the property about
13 having to block off the traffic, you know, to allow
14 people to be disadvantaged in that particular manner.
15 And we would do that probably for half a day.

16 BOARD MEMBER ETHERLY: Okay. The reason
17 why I inquire is the language of that particular
18 provision is fairly specific as it relates to the
19 issue of other uses. It reads in relevant part that
20 "No other use shall be conducted." So, one, I wanted
21 to just raise the question to get a sense of whether
22 you were thinking about it and then, two, if you were,
23 note that you would probably in all likelihood not be
24 able to do that.

25 PASTOR MALLOY: Well, could you get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 special permission to do that kind of activity? It's
2 a one time affair a year. I'm just asking, because
3 I'm learning.

4 BOARD MEMBER ETHERLY: I understand. I
5 understand. Recognize that every little bit that you
6 change or that you seek differently changes the nature
7 of what is already a difficult application as we have
8 talked about. So I would think for the purposes --
9 not getting into providing you counsel and advise, but
10 for the purposes of 2303.1(c), you need to be thinking
11 about this space only as -- only for parking uses. I
12 understand the desire to use it in other ways,
13 especially where that would alleviate other impacts on
14 the community, but in this particular instance, I
15 think you would have a difficult time doing anything
16 else with the space, other than parking.

17 Thank you, Mr. Chair, that was the only
18 question I had.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you very much. Is there any questions from the Board?
21 At this time, Mr. McKay, do you have any cross
22 examination questions or do you want to save most of
23 your presentation in the case?

24 MR. MCKAY: I guess I'll -- simply to
25 remind Pastor Malloy that --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: I'm going to just
2 interrupt you, because it's actually cross examination
3 questions. You've got to ask him a question and he
4 will answer you deliberately.

5 MR. MCKAY: Okay. Right, right. Pastor
6 Malloy, did you or did you not -- did the church or
7 did it not have counsel from a competent architect
8 over the use of that property back in 2003 and 2004?

9 PASTOR MALLOY: The architect that we
10 have, Mr. McKay, was not for the parking facility, but
11 only for the expansion work on the church building
12 itself. So he did not give us any specific advice or
13 information about the parking facility, because that
14 was not in his domain.

15 MR. MCKAY: Yes. Pastor Malloy, you speak
16 of Casey Trees Foundation giving you advice on proper
17 landscaping of that lot or landscaping ideas on that
18 lot. Did you or did you not cut down trees
19 unnecessarily on that lot, several?

20 PASTOR MALLOY: Mr. McKay, those trees
21 that were cut down, many of them were defective, had
22 some things that were eating into them and so,
23 therefore, those trees were eliminated.

24 MR. MCKAY: Who made the determination?

25 PASTOR MALLOY: Well, I mean, we did as a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 church, but again we got permission to cut those trees
2 down.

3 MR. MCKAY: Did you -- you did not. Did
4 you or did you not -- did you or did you not tell me
5 oh, those trees are -- when I objected to you cutting
6 down the trees immediately upon you telling us that
7 we're going to put a parking lot there and essentially
8 there's nothing you can do about it, but just tell us
9 what configuration would you want as a group? Did you
10 or did you not immediately cut those trees down and
11 explain to me when I asked why you're doing that, oh,
12 Mr. McKay, those trees are diseased. You wouldn't
13 want that and what have you? Did you or did you not
14 explain that to me in that manner?

15 PASTOR MALLOY: Well, I thought it was
16 what I just said to you in terms of that process.

17 MR. MCKAY: Thank you.

18 CHAIRPERSON GRIFFIS: Any other questions?

19 MR. MCKAY: No, sir.

20 CHAIRPERSON GRIFFIS: Okay. Thank you,
21 Mr. McKay. All right. Let's move ahead then with the
22 Office of Planning's report.

23 MS. THOMAS: Mr. Chairman, on the matter
24 before us, the Office of Planning made the decision to
25 not recommend approval of this application. This

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 application was presented to the Board in 2005, BZA
2 17261, and it was subsequently withdrawn. Whereupon,
3 the applicant proceeded to use the property as a
4 parking lot without Board approval.

5 As detailed in our report, OP continues to
6 believe that the application did not show how the lot
7 would comply with the various sections of the Zoning
8 Regulations and how the impacts would be addressed,
9 given the community's concern about a parking lot in
10 the neighborhood.

11 In meeting with the applicant, OP
12 consistently advised the applicant to detail how the
13 zoning requirements would be met, including submission
14 of a revised site plan which meets the requirements of
15 the regulations. OP and DDOT previously recommended
16 more than 5 percent of the lot be landscaped and that
17 an 8 to 10 foot buffer be provided at the east
18 property line.

19 Therefore, for the reasons outlined in our
20 report, we stand on the record in not recommending
21 approval of this application. Thank you.

22 VICE CHAIR MILLER: Thank you. Ms.
23 Thomas, I just have a couple of questions. One is
24 about the use of the lot without Board approval. Is
25 that going on now?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. THOMAS: That's correct.

2 VICE CHAIR MILLER: That's correct. And
3 is DCRA taking any enforcement action that you know
4 of?

5 MS. THOMAS: I knew that we submitted some
6 correspondence to DCRA via email that the lot was
7 being used after it was withdrawn and I understand
8 from the filings that there was some action taken by
9 DCRA. We had no correspondence with DCRA concerning
10 whether they did cite it or not, but I understand from
11 what's been filed that they have been cited and this
12 matter is in court.

13 VICE CHAIR MILLER: And they built the lot
14 without a permit from DCRA or did DCRA erroneously
15 issue a permit that was revoked?

16 MS. THOMAS: I'm not sure.

17 VICE CHAIR MILLER: Okay.

18 MS. THOMAS: I have no information.

19 VICE CHAIR MILLER: Okay. Over what
20 period of time have you worked with the applicant on
21 this case?

22 MS. THOMAS: Well, when the case was filed
23 the first time, after the applicant withdrew the case,
24 I specifically told the applicant's representative
25 that these are the steps again that which must be met

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 before the case comes back, if he has to come back, a
2 revised site plan that we needed, landscaping plan and
3 everything and that went away.

4 At this time, the applicant contacted OP.
5 I had tried to get some information to contact the
6 applicant. The applicant called us. We discussed the
7 matter over the phone a few times. He decided to come
8 in. We gladly met with him, because we wanted him to
9 understand what was necessary. We still wasn't
10 satisfied with the submission.

11 I pointed out to him that it was the same
12 submission that was filed before. There were no
13 changes. It's the exact same plan and what we needed
14 was a detailed site plan with a detailed landscaping
15 plan. He then informed me that DOH had approved the
16 plan. I said well, I understand that we have the
17 Storm Water Plan and that's a separate approval, that
18 there are various steps in the approval of a parking
19 lot within an R-1-B Zone. He put his own regulations
20 and this aspect -- this is just one piece of the
21 puzzle. This is one piece of the situation. This has
22 to be met.

23 So, you know, I took him through that and
24 I said, you know, before if you -- if you concerned
25 about this at this time, you might want to ask for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 postponement if, in fact, you're going to produce
2 this. I did ask him. I did let him know that we
3 would have no choice but to not recommend approval if
4 we hadn't received materials in time for filing this
5 report. And therein lies our report.

6 VICE CHAIR MILLER: Thank you.

7 CHAIRPERSON GRIFFIS: Mr. Etherly?

8 BOARD MEMBER ETHERLY: Thank you very
9 much, Mr. Chair. Thank you very much, Ms. Thomas, for
10 your very excellent report and I would dare say your
11 patience in dealing with what has clearly been a
12 difficult application. Let me just -- I want to
13 highlight very, very quickly, really it's going to be
14 a series of just confirmation questions, if you will,
15 but I want the applicant to be very attentive as I run
16 through this.

17 On page 9 of your report, you go through
18 very good detail in terms of the outstanding concerns
19 from DDOT and I just want to run through those six
20 bullets to make absolutely certain that it's clear
21 this is information that is still outstanding. First,
22 the proposed entrance/exit of the lot is too close to
23 Jackson Street and should be moved further south. At
24 this point, you have no additional information on
25 whether that has been addressed, correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. THOMAS: No information.

2 BOARD MEMBER ETHERLY: Thank you. With
3 respect to the second bullet, the only access to the
4 rear of the church is a 3 foot wide handicap ramp and
5 the church is about 5 feet above the alley grade. The
6 applicant has to show how this will be addressed. At
7 this point, you've gotten no further information on
8 that particular issue?

9 MS. THOMAS: No further information.

10 BOARD MEMBER ETHERLY: Third, there is
11 potential vehicle/pedestrian conflict since screening
12 will have to be provided and nothing is shown as to
13 how this may be addressed. There is a site/distance
14 concern and the Department of Transportation would not
15 encourage pedestrians walking across the alley.
16 Again, you have not received any additional
17 information on that bullet point?

18 MS. THOMAS: That's correct.

19 BOARD MEMBER ETHERLY: DDOT suggests that
20 the applicant provide more than 5 percent landscaping.
21 I'm going to bypass that as we've already talked about
22 it, but again, no information has been received by you
23 on that issue as of yet?

24 MS. THOMAS: That's correct.

25 BOARD MEMBER ETHERLY: DDOT suggests that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the plans be submitted to WASA to determine where the
2 runoff ties into the sewer system. Again, no further
3 information has been provided at this time. And then
4 finally, the suggestion regarding the use of pervious
5 pavers for the lot to reduce runoff. Again, no
6 additional information has been provided?

7 MS. THOMAS: That's correct.

8 BOARD MEMBER ETHERLY: Excellent. I'm not
9 looking for a response, Pastor Malloy, but I just
10 wanted to highlight in the Office of Planning's report
11 the very specific concerns that DDOT has that will
12 need to be addressed in the additional submittal. So
13 I just wanted to highlight those and be sure that the
14 church was aware of those very specific
15 considerations. Thank you very much, Ms. Thomas.

16 MS. THOMAS: Thank you.

17 BOARD MEMBER ETHERLY: Again for a very
18 excellent report considering the challenges that you
19 have had to deal with.

20 CHAIRPERSON GRIFFIS: Very well. Are
21 there any other Board questions of the Office of
22 Planning, at this time? Does the applicant have any
23 cross examination questions of the Office of Planning?

24 PASTOR MALLOY: Again, Mr. Chairman, and
25 I appreciate the time, the patience, the issues that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have been going on. When we first started this
2 process, we --

3 CHAIRPERSON GRIFFIS: I'm sorry. This is
4 just quick questions of Office of Planning based on --

5 PASTOR MALLOY: Oh, quick --

6 CHAIRPERSON GRIFFIS: -- their
7 information.

8 PASTOR MALLOY: -- of their --

9 CHAIRPERSON GRIFFIS: Yes.

10 PASTOR MALLOY: Questions of Office of
11 Planning?

12 CHAIRPERSON GRIFFIS: That's it.

13 PASTOR MALLOY: Well, again, I thought
14 that when I contacted the Department of Health and
15 faxed the information about the Watershed Division's
16 report as to what they would be doing for that
17 property and also from Casey Trees that that would at
18 least be a start in terms of, you know, landscaping --

19 CHAIRPERSON GRIFFIS: Is this a question
20 for the Office of Planning?

21 PASTOR MALLOY: Well, did you receive
22 those, Ms. Thomas, from me -- from Mr. Biado?

23 MS. THOMAS: I received --

24 PASTOR MALLOY: I faxed to your office, at
25 least I thought I had the right fax number.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. THOMAS: That's correct. Mr. --

2 PASTOR MALLOY: Mr. Biado?

3 MS. THOMAS: -- Biado. It's attached to
4 our report. On March 30th he is saying that the --
5 for the record, that the church has applied for
6 funding to construct a rain garden and, at this time,
7 if the church is awarded a grant, the rain garden
8 would add aesthetic value to the property. And that
9 finally while there is no guarantee that the candidate
10 proposals submitted will be funded, it is a project
11 that is technically feasible, because it has the
12 proper green and drainage characteristics.

13 This was not interpreted by the Office of
14 Planning as an approval. This is a letter stating
15 that the church has applied for funding to install a
16 rain garden.

17 CHAIRPERSON GRIFFIS: So you received
18 their faxes.

19 MS. THOMAS: Right.

20 CHAIRPERSON GRIFFIS: Next question.

21 PASTOR MALLOY: Again -- no, I don't have
22 a specific question. I just want to make a statement.

23 CHAIRPERSON GRIFFIS: Okay. You'll have
24 time. Not to worry.

25 PASTOR MALLOY: All right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: We've got a little
2 bit more to get through. Mr. McKay, cross of OP? Any
3 cross examination questions of the Office of
4 Planning's testimony? Very well. I'm sorry, does the
5 ANC have any cross? No cross, at this time, from the
6 ANC.

7 MR. MCKAY: Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes?

9 MR. MCKAY: Mr. Chairman, if I may inquire
10 from Ms. Thomas, okay?

11 MS. THOMAS: Sure.

12 MR. MCKAY: What is your understanding of
13 a rain garden and the rain garden that the applicant
14 has in mind as to its appearance and its effect on
15 runoff?

16 MS. THOMAS: Well, we're going to base our
17 opinion on the rain garden, on DOH's report in the
18 sense that typically a rain garden it's an effective
19 way to remove particulates and it catches water, the
20 type of plants absorb water quickly, depending on the
21 type of plants you're using in that garden area. It
22 has the ability to absorb water, capture and to
23 capture pollutants.

24 I have no idea, because we have no plans
25 submitted, as to where the rain garden would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 located or sited or how big it is, how small it is or
2 its dimensions.

3 MR. MCKAY: Okay.

4 CHAIRPERSON GRIFFIS: Follow-up? Any
5 other questions on that?

6 MR. MCKAY: No, thank you.

7 CHAIRPERSON GRIFFIS: Thank you very much.
8 Very well. We have essentially assessed the other
9 Government Agency reports and the Office of Planning
10 attached most of those to their recent submission and
11 in the past. I think we can move on to the ANC, at
12 this point. Oh, dear, did he just leave? If he's
13 ready, we can have the ANC present their report to the
14 Board.

15 MR. MCKAY: Mr. Chairman?

16 CHAIRPERSON GRIFFIS: Yes, sir?

17 MR. MCKAY: The documents I would like to
18 submit for the record, since you mentioned that unless
19 they are properly introduced they can't be submitted.
20 I would like for the record to submit as attachment to
21 application -- excuse me, application for party status
22 these documents here, which consist of Application No.
23 17261 of the applicant filing December 2004.

24 CHAIRPERSON GRIFFIS: Okay. You don't
25 need to read it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MCKAY: Okay.

2 CHAIRPERSON GRIFFIS: It's what you have
3 already passed out. Is that correct?

4 MR. MCKAY: No.

5 CHAIRPERSON GRIFFIS: Hang on this is
6 different.

7 MR. MCKAY: No, no, no.

8 CHAIRPERSON GRIFFIS: I gotcha. Okay. Do
9 you have copies for the applicant and everybody up
10 here?

11 MR. MCKAY: No, I --

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. MCKAY: -- don't at this time.
14 Anyway, that's seven documents here.

15 CHAIRPERSON GRIFFIS: Okay. Why don't we
16 do this. While the ANC is presenting their report,
17 why don't you hand that to Ms. Bailey and we'll make
18 sure we get that distributed.

19 MR. MCKAY: Very well.

20 CHAIRPERSON GRIFFIS: And while he is
21 doing that and the ANC is getting ready to introduce
22 themselves, let me just ask how many folks are here to
23 provide testimony today in this application? Okay.
24 So very well. Let's move ahead. A very good
25 afternoon, sir.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BOSTON: How you doing?

2 CHAIRPERSON GRIFFIS: Good.

3 MR. BOSTON: My name is William Boston.
4 I'm the ANC Commissioner 5A07. I live at 3319 14th
5 Street, N.E. I don't know where to start. As you
6 know, I became a Commissioner last year after Mr. Bob
7 Artisst, so I inherited this situation. And when I
8 first inherited it, the neighbors had not -- the
9 church had not met with the community. They hadn't
10 gotten together in a while.

11 So as you know, last year in January, was
12 it January we came to a hearing in which the ANC voted
13 unanimously in opposition of Brookland Union Baptist
14 Church. Mr. McKay is correct after that, they
15 immediately erected a parking lot and began to park
16 and in which they are parking until this day.

17 CHAIRPERSON GRIFFIS: Okay. Did you have
18 a presentation by the church at the ANC meeting?

19 MR. BOSTON: I just -- excuse me?

20 CHAIRPERSON GRIFFIS: Sure.

21 MR. BOSTON: Can you repeat your question,
22 please?

23 CHAIRPERSON GRIFFIS: Was the applicant
24 present at the ANC meeting?

25 MR. BOSTON: No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BOSTON: They have not been to one ANC
3 meeting to -- they have not been to one committee as
4 a whole to present this to the community.

5 CHAIRPERSON GRIFFIS: Okay. Excellent.
6 And we have Exhibit 26, which is your submission.

7 MR. BOSTON: Right, right, the resolution.

8 CHAIRPERSON GRIFFIS: Good. Does the
9 applicant have any cross examination of the ANC? Any
10 questions of the ANC?

11 PASTOR MALLOY: Oh, we were not invited as
12 a church to any ANC meeting to my knowledge, and Mr.
13 Boston has our address.

14 CHAIRPERSON GRIFFIS: Okay.

15 PASTOR MALLOY: He has personally made
16 visitations to our church. We had two meetings with
17 the community. I have the dates in my calendar. One
18 meeting that was first --

19 CHAIRPERSON GRIFFIS: Okay. Yes, I
20 understand that.

21 PASTOR MALLOY: -- scheduled was omitted.

22 CHAIRPERSON GRIFFIS: And I understand,
23 but so the question is were they invited to the ANC
24 meeting?

25 MR. BOSTON: No, they were not -- they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 were invited to come out and speak on this, but no,
2 they were not invited to the ANC meeting as a whole.
3 Number one, if you have an issue in which you want to
4 bring before -- I think one of the problems here is
5 that ignorance is not an excuse and that's what we're
6 hearing over and over right here in this hearing is
7 ignorance.

8 And I'm sorry, these are both my
9 constituents. Both, I have to represent them even
10 after this -- we leave here. But ignorance is not an
11 excuse and that's what we're hearing over and over
12 here. And so I just want to plainly put that out
13 there. So they were not invited to come to the full
14 assembly meeting, but I'm the -- I'm in contact with
15 them. I live a block and a half from the church and
16 so I brought them together and they hadn't met in
17 several years.

18 So if you have an application and you want
19 to place it before the -- it's not my job. I can't go
20 to everyone and invite them to the meeting.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. BOSTON: You're supposed to come to
23 the ANC office and the information is supposed to come
24 to me.

25 CHAIRPERSON GRIFFIS: Let me ask you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 directly then. What did the ANC base their decision
2 on? I mean, wouldn't they have needed information
3 from the applicant to decide whether they would
4 support or not support the application?

5 MR. BOSTON: Well, the application did
6 come. The application did come to the -- it did come
7 in the mail. The application did come in the mail.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BOSTON: It came to the ANC office.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BOSTON: The application did come in
12 the mail and we were able to -- we discussed the
13 application in our executive committee meeting.

14 CHAIRPERSON GRIFFIS: I see. So you had
15 the application and that's what you did?

16 MR. BOSTON: Yes, we did have the
17 application.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. BOSTON: And plus, I had had meetings
20 with the church and the community previously.

21 CHAIRPERSON GRIFFIS: Sure, sure.

22 MR. BOSTON: So --

23 CHAIRPERSON GRIFFIS: Understood.

24 MR. BOSTON: Right. We did -- there was
25 information. There's plenty of information.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BOSTON: So, yes, there was
3 opportunity for that. They just did not present it at
4 a full assembly meeting.

5 CHAIRPERSON GRIFFIS: Appreciate it. Mr.
6 McKay, cross of ANC?

7 MR. MCKAY: No.

8 CHAIRPERSON GRIFFIS: You don't have to.

9 MR. MCKAY: No, not at this time.

10 CHAIRPERSON GRIFFIS: Okay. Any other
11 Board questions of the ANC? Very well. Thank you
12 very much. We do appreciate it and we appreciate your
13 patience in staying to present that to the Board.
14 Let's move ahead then. That would take care of all
15 the Government Agency reportings and ANC. I think
16 it's appropriate, Mr. McKay, if you would like to
17 present your case, at this time.

18 MR. MCKAY: Yes, good afternoon again. My
19 name is Jammie McKay. I live at 1400 Jackson Street,
20 my wife and I. We purchased our property in 1972 and
21 we live directly across the street from Brookland
22 Union illegal parking lot in a neighborhood zoned R-1-
23 B with single-family dwellings. With me are some of
24 my neighbors. Fritz and his wife, Ruth, Michelle,
25 Lauren, Joe Porter, Mrs. Johnson and some others, not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 all of our members, but some of them.

2 I represent the party status of the
3 Concerned Neighbors of Brookland Union Baptist Church.
4 We are here to oppose BZA's Application No. 17454.
5 Note that this is not the first time the church has
6 come before you to request a special exception and
7 variance for accessory parking lot at 1415 and 1419
8 Jackson Street, N.E.

9 In 2004, through its agent, the Brookland
10 Union Baptist Church submitted Application No. 17261.
11 That application is practically identical to the
12 application before you today. For the record, I
13 submit the seven documents, as I mentioned:
14 Application No. 17261, the memorandum report from
15 Office of Planning issued December 20, 2004 in the
16 previous case Exhibit No. 37, and the memorandum
17 report of the Department of Transportation issued or
18 placed in the record on January 3, 2005 in the
19 previous case Exhibit No. 39, and Department of
20 Transportation was in opposition to the application.

21 As you recall, Office or Planning's
22 position was it didn't have -- did not have sufficient
23 information in the record to render a decision, but
24 made recommendations. I also submit two newspaper
25 articles, petitions, letters from neighbors prepared

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 last year in opposition to Application No. 17261 and
2 other written letters written recently in opposition
3 to this present Application 17454.

4 Now, all the comments apply equally to the
5 current application. The obvious difference between
6 the prior application and this one is the passage of
7 time. For an entire year, Brookland Union has
8 operated its parking lot regularly, illegally, without
9 BZA's approval or the city's, for that matter.

10 We ask the Board, therefore, the Board of
11 Zoning Adjustment to do the following: Deny
12 Application No. 17454, order Brookland Union Baptist
13 Church to immediately desist using the Jackson Street
14 illegal parking lot, order Brookland Union to tear up
15 the pavement, order Brookland Union to remove the
16 chain link fence and immediately to replace it with a
17 suitable alternative and order Brookland Union to
18 landscape and maintain the property.

19 We want to streamline our case as much as
20 we can. I would like to have Michelle to come forward
21 and present as a witness some comments and
22 observations.

23 MS. SEDGEWICK: Good afternoon, everyone.
24 I have prepared a written statement and I do have
25 copies and I will leave them for the applicant and for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Board. I won't read it, it's way too long and we
2 have been here far too long. But I'll just make a
3 couple of comments and I will do my best to be brief.

4 First of all, I think it would be more
5 accurate if we -- if Brookland Union had come here
6 today to announce that it had already built the
7 parking lot and basically it is asking for the BZA's
8 forgiveness after the fact. Now, I understand there
9 is some limitation to the BZA's jurisdiction here, but
10 suffice it to say that we are very unhappy that we
11 have had to endure a year of a parking lot that had
12 come about without any consideration for the District
13 of Columbia's laws, for one thing, and certainly it
14 appeared as if the applicant and the community had
15 never had a conversation about what may or may not be
16 the right thing to do with that property.

17 The application itself I submit to you is
18 defective and it's deficient and that is reason enough
19 to deny it in its current format. The current parking
20 lot has an entrance at a very awkward location. I
21 live three doors up from the lot and from my front
22 porch and I do this for my own amusement, I actually
23 watch cars trying to pull from Jackson Street into the
24 alley and into the parking lot. It's a rather awkward
25 angle and nowadays since everybody seems to want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 drive a truck, it makes it that much more difficult.

2 Another thing that -- this is my pet
3 peeve. I'm not a person who cares much for air
4 conditionings, so I tend to leave my windows open for
5 months at a time. What we have is a parking lot that
6 is about 8 feet from the Porters' property line, so my
7 neighbors, Joe and Dorothy Porter and their household,
8 are dealing with cars that are parking, I would say
9 roughly, 10 to 12 feet from their bedroom windows.

10 Nowadays, everyone has those obnoxious
11 beeping automatic car locks. There are other people
12 here that can talk to you about noise and exhaust
13 fumes and all of that, but there is noise that's
14 significant enough that three doors away I can hear it
15 from my porch, from inside the house, whether the
16 windows are open or closed or otherwise.

17 I also submit to you that the -- a parking
18 lot in an R-1-B Zone is not consistent with what R-1-B
19 zoning is about. Now, I know Office of Planning
20 disagrees with me and we'll just have to disagree --
21 agree to disagree on that point. What we have is a
22 gaping hole in this block where two houses ought to
23 be. Now, my neighbor Fritz von Fleckenstein will
24 testify today and he will give you a fine pictorial
25 view of what this property was and what it has become.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And right now, we're dealing with an
2 eyesore and it can be prettified. I can see all kinds
3 of ways. There is a right way and a wrong way to get
4 this parking lot to happen. Nothing about this
5 applicant or this application process has been right.
6 I'll speak for myself here, because I know some of my
7 neighbors disagree with me on this point, there is
8 probably a way that the plan could be substantially
9 modified to make it not so offensive and it's a real
10 shame that there has been no effort on the applicant's
11 part to have that come about.

12 And lest I ramble on, I will be quiet now
13 and make myself available to answer questions. And as
14 I said, I will leave copies of my written statement
15 and I hope that you find it helpful.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much. I think we will go through all of your
18 case presentation and then we'll take up any questions
19 from the Board and then cross.

20 MR. MCKAY: Yes, I would like to have
21 Fritz von Fleckenstein to come forward, please. He
22 will make presentations on a pictorial representation
23 of peculiar views of the property before and after the
24 parking lot was installed, as well as he will also
25 make presentations on some chronics as to why are we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 where we are and how we got here.

2 MR. VON FLECKENSTEIN: Good afternoon. My
3 name is Fritz von Fleckenstein. I live at 3109 14th
4 Street. I'm going to go through this material very
5 quickly. You have the packet with you actually.

6 CHAIRPERSON GRIFFIS: Does the applicant
7 have a copy of the packet?

8 MR. VON FLECKENSTEIN: Oh, no, but there
9 were 10 copies given to you, so perhaps.

10 MS. SEDGEWICK: Do we have an extra copy?

11 MR. VON FLECKENSTEIN: No.

12 MS. SEDGEWICK: Oh, okay.

13 MR. VON FLECKENSTEIN: Do you have a copy
14 for --

15 VICE CHAIR MILLER: Yes, we've got it.

16 CHAIRPERSON GRIFFIS: I'm sorry.

17 MS. SEDGEWICK: I can put together our
18 packet.

19 MR. VON FLECKENSTEIN: Yes, yes. That's
20 not it, that's his.

21 MR. MCKAY: You gave 10 copies?

22 CHAIRPERSON GRIFFIS: Very well. Let's
23 proceed.

24 MR. VON FLECKENSTEIN: All right. So,
25 first, was that little story which you already heard.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The second is a detailed chronology of activities and
2 I won't read any of that here, but I think you might
3 find it interesting reading.

4 CHAIRPERSON GRIFFIS: Fascinating,
5 actually, starting from 1925.

6 MR. VON FLECKENSTEIN: Yes.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. VON FLECKENSTEIN: Well, it puts --

9 CHAIRPERSON GRIFFIS: It does.

10 MR. VON FLECKENSTEIN: -- some of the
11 statements made here in context.

12 CHAIRPERSON GRIFFIS: I didn't mean that
13 as a joke, but I'll take the laughs as I get them, you
14 know. Okay.

15 MR. VON FLECKENSTEIN: The next thing I
16 have is the location map.

17 CHAIRPERSON GRIFFIS: Excellent.

18 MR. VON FLECKENSTEIN: And that shows
19 where the members of the Concerned Neighbors actually
20 live with respect to the parking lot and to Brookland
21 Union Baptist Church.

22 CHAIRPERSON GRIFFIS: Excellent.

23 MR. VON FLECKENSTEIN: And I think that's
24 what we have. Okay. I have a brief sheet here which
25 I titled "How Brookland Union Trashed the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Neighborhood," and you can just see through there the
2 two houses that were originally there. By 2002, there
3 is only one house with some trees. By 2003, one house
4 and no trees. A very interesting day that was.

5 Now, 2003, September, there was an
6 attempt, an amateurish attempt to demolish the house
7 by some gentlemen with a pickup truck and a rope.
8 They didn't do very well and they did not have a
9 permit to do that at all. Later it was properly
10 demolished in October. So then October 2003, we end
11 up with nothing but mud.

12 And May 2005, asphalt being rolled on the
13 parking lot. And the next day we have a parking lot.
14 There is a bigger pack of photos called -- just named
15 photographs and some of these same pictures actually,
16 but you have the period of demolition by neglect.
17 Then you have some pictures of the rest of the
18 neighborhood just to give you an idea of how really
19 nice some of these other houses look.

20 And then you have the period of so-called
21 beautification, which basically was sneaking in a
22 parking lot. And one of the things to note here is
23 13A, March 9th, you will find that an interesting
24 date. That was the day after the application was
25 withdrawn. The Concerned Neighbors were sent a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 beautification notice about the landscaping that would
2 be done. And then the following pictures show
3 spreading the gravel, rolling the gravel.

4 On, I think it was, May 4th, a pile of so-
5 called organic material was brought in. It turned out
6 to be recycled asphalt. This was --

7 CHAIRPERSON GRIFFIS: Let me have you use
8 your time, however, to get directly to what we are
9 here today to do, sir.

10 MR. VON FLECKENSTEIN: Okay.

11 CHAIRPERSON GRIFFIS: Because in many
12 respects, really the Board is looking at not the
13 existing condition or what has happened before, but
14 whether a parking lot can go there or not go there.

15 MR. VON FLECKENSTEIN: Okay. Fine. Let
16 me go on to the need for a parking lot. I mean, I
17 don't know if -- I think there really isn't a need for
18 this parking lot. In my five and a half years of
19 living on 14th Street, near Jackson, I've observed
20 that there are ample parking spaces on both of these
21 streets, both weekdays and on Sunday mornings. And
22 DDOT in their 2004 report agrees with me.

23 Since the parking lot was actually
24 constructed, I did go out and take some pictures on a
25 Sunday morning, Palm Sunday, in fact, of this year

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 during the service at Brookland Union. It shows
2 clearly that all or almost all of the 20 cars parked
3 on the lot could have been accommodated by on-street
4 parking. Not more than a block and a half from the
5 church.

6 If you look at the exhibits, there is the
7 photographs there. You see the parking lot. The east
8 side 10 cars, the west side 10 cars. Look at 1400
9 Block of Jackson Street. That picture to your
10 immediate right is the parking lot. There is an empty
11 street there with at least 12 spaces. Walk down 14th
12 to Irving and look west and you see four more spaces.
13 Walk back up to Jackson Street and look north on 14th
14 and there are three more spaces.

15 Now, the other thing that was mentioned in
16 the application is that there is a -- that there is a
17 lack of public transport. That's not true. There is
18 excellent public transport available. The H6 shuttle
19 bus from Brookland Metro stops directly across 14th
20 Street from the church coming from Brookland Metro and
21 across Irving Street returning to Brookland Metro.
22 And you look at the pictures, the pictures of the bus
23 stops there, and you can see that the bus stops are
24 right there.

25 I also have a map of the route of the H6

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and where it stops and where Brookland Union is and
2 the Sunday schedule, which shows that there are ample
3 runs. It just so happens that my wife and I don't own
4 a car and we use public transport all the time. We
5 have never had trouble getting to or from our house,
6 including attending our downtown church on Sunday
7 mornings. Several of our neighbors attend downtown
8 churches using public transport also with no
9 difficulty.

10 As for the argument that the parking lot
11 is needed for handicapped and elderly parishioners,
12 the same DDOT report, I mentioned a moment ago and we
13 have heard again, mentioned the having to require
14 people to cross the alley exposing them to danger. In
15 addition, the rear ramp is too narrow and lacks a
16 railing and so forth. In fact, we have -- and we have
17 a handicap member in our group who is wheelchair bound
18 and when we went to meetings at the church getting
19 that wheelchair down that ramp and into the basement
20 was a real challenge.

21 By contrast, the ramp to the front door of
22 the church is elegant, wide and safe. Not
23 surprisingly, all of the handicap parishioners
24 actually use the front ramp and are dropped off either
25 by personal cars, the Metrobus or Metro access. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 use of Metrobus and Metrorail by handicap people is
2 actually quite convenient.

3 I mentioned that one of our neighbors is
4 confined to a wheelchair and she was able to easily
5 come to the previous two sessions, hearings that were
6 here. The buses are equipped with a ramp which
7 extends out to the sidewalk to make boarding and
8 leaving the bus much easier than negotiating the
9 dangerous ramp at the rear of the church. Metrorail
10 Stations are supplied with elevators, the platforms
11 are level to the floor of the car providing easy
12 access.

13 I mention all this so -- I mean, this is
14 stuff that is easily understood by people who take
15 public transport all the time and may not necessarily
16 be okay. So winding it up, just in order to build
17 this unnecessary parking lot, well, I think I might
18 skip this, you know. Going over what happened in the
19 past and then I end up with the same statement that
20 Mr. McKay did about what I would like.

21 MR. MCKAY: Thank you, Fritz. At this
22 time, we would like to hear from Joe Porter.

23 CHAIRPERSON GRIFFIS: Excellent.

24 MR. MCKAY: I mean, Porter lives adjacent
25 to the property and he has a very unique perspective

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on the effect of that parking lot.

2 MR. PORTER: Good evening, ladies and
3 gentlemen of the Board. Actually, my name is Chester
4 F. Porter and I came from work this morning, so I
5 didn't have time to grab, you know, my paperwork, but
6 yes, I'm really concerned that I am adjacent. I'm
7 adjacent on to 1419, because I live at 1423 Jackson
8 Street, N.E.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. PORTER: I live --

11 CHAIRPERSON GRIFFIS: Right. We can take
12 a look at -- actually, the graphic that was presented
13 is excellent to show the proximity of your house. So
14 what do you see as the adverse conditions created for
15 you, if this was to be approved?

16 MR. PORTER: Well, when they put the chain
17 fence up, I had a little wooden fence in the front.

18 CHAIRPERSON GRIFFIS: Sure.

19 MR. PORTER: And for the side, it was
20 connected to my 6 foot wooden fence. Now, I don't
21 have it, because when they put the chain fence up,
22 they knocked it down what was left of it.

23 CHAIRPERSON GRIFFIS: Okay. So you're
24 concerned about screening on your side on your
25 property?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. PORTER: Right.

2 CHAIRPERSON GRIFFIS: Some sort of
3 fencing. Okay.

4 MR. PORTER: And then my wife and I worry
5 about noise factors and she is asthmatic. So, you
6 know, we like to leave our doors open also, especially
7 our back doors and then letting our dogs run. But I
8 noticed also on the, you know, lot that they had put
9 tree boxes or put some type of flower boxes in. They
10 have flower boxes for -- you know, half the boxes
11 there and the flowers was growing there for a while
12 until they start parking. They kill their own
13 flowers.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. PORTER: As well as some of mine.

16 CHAIRPERSON GRIFFIS: What other aspects
17 do you see as this making noise that would be
18 objectionable to you and the adjacent neighbors? We
19 have heard about the car alarms.

20 MR. PORTER: Right. I mean, you know, I
21 work 11 to 7 at night, you know, and I come home, you
22 know, and sometimes, you know, I want to, you know,
23 sleep through.

24 CHAIRPERSON GRIFFIS: Sure.

25 MR. PORTER: You know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: What makes noise on
2 the parking lot though?

3 MR. PORTER: Um, a car alarm might go off
4 or, you know, set something, you know, because you
5 gets trucks, fire trucks and everything up and down
6 14th Street.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. PORTER: And it don't take too much
9 for someone to have sensitive --

10 CHAIRPERSON GRIFFIS: Are you concerned in
11 your written submission and part of the party's
12 written submission, you're talking about the loud
13 talking, shouting. Are you concerned about the noise
14 that people would make on the parking lot?

15 MR. PORTER: Yes, I mean, you know,
16 sometimes people don't agree with one another and they
17 can end up, you know, getting into, you know, fights.

18 CHAIRPERSON GRIFFIS: Not only on parking
19 lots.

20 MR. PORTER: I mean, yes, on the lot, I
21 mean, you know.

22 CHAIRPERSON GRIFFIS: Okay. Understood.

23 MR. PORTER: And then --

24 CHAIRPERSON GRIFFIS: Understood. Good
25 points. What else?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. PORTER: And recently, we did have
2 lighting out there in our alley, but since then, since
3 the lot went in and things of that nature, we don't
4 have no more lighting. It's dark out there.

5 CHAIRPERSON GRIFFIS: Where was the
6 lighting before?

7 MR. PORTER: In the alley, which is the --
8 which divides the, you know, church and the lot.

9 CHAIRPERSON GRIFFIS: Was it city
10 fixtures? Was it city lighting?

11 MR. PORTER: Yes, city lighting.

12 CHAIRPERSON GRIFFIS: Okay. I'd call DDOT
13 on that, I would. Okay. Anything else?

14 MR. PORTER: Um, you know, the -- you
15 know, sometimes the smell, you know, from the exhaust
16 fumes, you know, and you look on the, you know, side
17 of my, you know, where the lot and my fence, they used
18 my fence actually a majority of it on, you know, that
19 side. And you can see the exhaust fumes, you know,
20 had, you know, up and down the -- you know, had
21 messed, you know, the fence up.

22 CHAIRPERSON GRIFFIS: I see.

23 MR. PORTER: On that side.

24 CHAIRPERSON GRIFFIS: Okay. Very well.

25 MR. MCKAY: Thank you very much --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. PORTER: Thank you.

2 MR. McKAY: -- Mr. Porter. Brookland
3 Union, our particular neighborhood and Brookland
4 Union, Jackson Street and the properties surrounding
5 the church's property, both the church itself and the
6 parking lot, is highly diverse socially and
7 economically, age-wise, gender-wise and otherwise. We
8 have a number of elderly people, a number of sick
9 people, a number of retired people, so we are very
10 concerned about the adverse impact of this parking lot
11 on the neighborhood and on individual residents.

12 Adverse impacts include the noise, noise
13 of the vehicles, the noise of the traffic, the noise
14 in the parking lot as well as the noise on the street,
15 queuing up for the parking lot. We're concerned about
16 the traffic and the safety issues related to the
17 traffic. It has been pointed out by DOT the concern
18 about the coming together of people in the alley and
19 the cars either queuing up coming onto or coming off
20 of the lot.

21 That's a safety issue. It's a safety
22 issue for its own people, because they regularly use
23 that alley even when they are parked on the street
24 going to and from the rear of the church to their cars
25 or from their cars. But you can imagine children at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 play with the traffic.

2 We're concerned about air pollution, as
3 Mr. Porter has pointed out, the fumes. He is very
4 unique in his property is next door. I'm directly
5 across the street. My house is close to the front of
6 the street. We have some health issues. We have a
7 number of elderly, retired and sickly people in the
8 neighborhood. We're concerned.

9 There had been lights there. As Mr.
10 Porter had pointed out, mysteriously they disappeared.
11 And in the proposal or at least anticipating the plan,
12 since they wanted to make use of the parking lot for
13 nighttime activities, aren't they concerned about
14 safety?

15 Lights would be a factor to minimize the
16 safety issues, but we are concerned about those lights
17 particularly if they are not properly positioned and
18 depending upon the time of night, how late at night
19 they were to be there, particularly properties such as
20 Mr. Porter's who is adjacent and Mr. and Mrs. Fritz
21 von Fleckenstein's property and other neighbors.

22 Of course, we are concerned about the
23 water runoff. Our major, major concern is because
24 that's a low point in the neighborhood and I have
25 lived there since 1972. We have had major, major

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 water problems with water coming from 360 degrees
2 directions and off of that lot as well. And so that
3 has to be considered.

4 And I'm concerned whether or not that rain
5 garden will be adequate enough. I would like to hear
6 from Ms. Lauren who professionally can address that
7 issue.

8 MS. WHEELER: My name is Lauren Wheeler
9 and I am on the Steering Committee of the Chesapeake
10 Conservation Landscaping Council, as well as being a
11 board member of the Local Landscape Designers Group,
12 as well as being a member of the National Governor's
13 Board for the Ecological Landscape Association.

14 I have designed and installed rain gardens
15 throughout this area and recently had a project that
16 we did at City of Tacoma Park in that the Association
17 Society of Landscape Architecture magazine featured in
18 the latest edition in March.

19 The idea of the rain garden in that area
20 is inadequate in terms of the other conditions that
21 they have outlined in terms of how they want the
22 parking lot needs to be met in terms of parking
23 spaces, buffer zones, etcetera, etcetera. Just in
24 terms of simple calculations, in terms of what the
25 square footage of the parking lot would be, and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 don't have those calculations in front of me right
2 now, you need about one-third of the space to one-
3 quarter of the space to be committed to a rain garden.

4 I have not seen any documentation in terms
5 of the soil percolation test or types of soils that
6 are over in that area, so I'm not even clear that a
7 rain garden would be suitable in that specific area.
8 So I'm significantly concerned that that was presented
9 as evidence by the applicant and, if need be, there
10 can be an engineer's report in regards to storm water
11 runoff and would need to be.

12 I would concur with Mr. McKay that storm
13 water runoff in that neighborhood has been a problem
14 for a long period of time. That is in a low spot and
15 by putting in all of that paved material, and it is
16 solid paved material now, though the applicant stated
17 it was gravel. It is actually an asphalted or
18 recycled asphalt there.

19 We have a dramatic increase of pavement,
20 paved area there, which means that we have that much
21 more surface water runoff, which was not there
22 beforehand, because we had two to three healthy,
23 mature tree stands. I am also, by the way, certified,
24 ISA certified arborist. So we had healthy, mature
25 trees there on the lots prior to their take-down that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 helped mitigate storm water runoff issues.

2 So the applicant has actually put into
3 effect for our neighborhood a really detrimental
4 environmental condition that just impedes in general
5 issues in terms of the traffic up and down Jackson
6 Street. Because they have increased storm water
7 runoff, sometimes the storm drains aren't cleared out
8 on a regular basis and we can have storm water backup
9 during the winter months leading to icy conditions.
10 So that is my testimony in regards to that.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much.

13 MR. MCKAY: Other adverse effects include
14 the aesthetics. As Michelle Sedgewick pointed out,
15 that parking lot is such an eyesore. It's an eyesore
16 as it exists. It's likely to be an eyesore unless
17 they really put a lot of time and effort into
18 beautifying it to make it otherwise. But then we have
19 concerns to do that, you're putting a lot of shrubbery
20 and what have you, that increases the safety factor,
21 because we've got school children running up and down
22 the street. The school is right around the corner,
23 for that matter.

24 Whether in the day or in the night, the
25 screening is a good place to hide. Of course, you're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to have to have a fence around the screen
2 material, etcetera. But aesthetics is a factor. And
3 because of the aesthetics, the adverse effect of the
4 aesthetics, there is a major factor into the lowering
5 of property values on that street. We have properties
6 more than half a million dollars in value, assessed
7 value by the city. It's kind of likely -- it's kind
8 of unlikely that you would get that with the condition
9 as it is.

10 So in this appreciating market, housing
11 market, we can't benefit, okay. We cannot benefit
12 from the potential that perhaps we anticipated before
13 the building really got here and before the property
14 was altered as it is or otherwise, we cannot benefit.
15 Then there's the possibility of crimes. Okay. Here
16 again, depending upon how secure the lot is and how
17 screened it is, it can attract crime in and of itself,
18 because we do have crime in the neighborhood, okay.

19 And we have prostitution, we have drugs,
20 etcetera, etcetera. We also have killings not too
21 far, six or seven blocks, away at the Franciscan
22 Monastery. And, of course, we're concerned about
23 trash and debris. Here again, depending upon the type
24 of fence, screening and the attention to maintenance
25 that's given to that property as to whether trash and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 debris would be an issue, you can't avoid it, but you
2 can maintain it, for that matter.

3 Again, I said that we want to streamline
4 it. I think we have heard quite a bit about this
5 case. It's a case that has been long in standing.
6 Long before it got here, going back to 1996, as I
7 mentioned, and as an organized group of Concerned
8 Neighbors, who got involved with the concerns that the
9 church had about this property that it was acquiring
10 organized and, expressed our concerns to the church in
11 19 -- excuse me, in 2001.

12 So since 2001, we have met regularly with
13 the church. As the chronology of activities and
14 meetings will show in the evidence that's submitted to
15 you by Mr. von Fleckenstein, okay, pay careful
16 attention in that. Pay careful attention to the
17 statements of the pastor that the church has done
18 everything it could to comply with the concerns and
19 needs and interests and objections of the neighbors.
20 It is not so.

21 Pay careful attention to the church -- the
22 applicant's statement about when it first became aware
23 that it had an issue. The pastor said that he was not
24 aware until he looked around and saw some things
25 happening. No, we brought it to their attention and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we brought it to their attention with the concerns
2 that we're concerned about drugs. We're concerned
3 about prostitution. We're concerned about the debris
4 and the trash that this property is creating.

5 Real abandoned automobiles, we're
6 concerned as to what is your intended use of the
7 property. At any rate, we're where we are. Okay.
8 And I would like to say that in closing, there is very
9 strong opposition to the proposed parking lot. In its
10 first proposal as a 50 space parking lot, in its
11 present configuration as a 24 space -- 24 car parking
12 lot, opposition by the neighbors and by the community
13 organizations, the ANC being foremost.

14 We met every test in trying to be fair to
15 the church and trying to assess the needs and
16 interests of the community. Trying to get the church
17 involved, we got involved in assessing the interests
18 and needs of the community, as well as have the
19 community to understand what the church's interests
20 and needs were, for that matter. The church chose not
21 to get involved. They turned down our invitations.

22 Okay. We petitioned a number of times.
23 We bound it a number of times. We met with the ANC a
24 number of times.

25 CHAIRPERSON GRIFFIS: We're in full

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 appreciation of the efforts you made.

2 MR. MCKAY: Very well. So we ask the
3 Board of Zoning Adjustment to deny the application,
4 order Brookland Union to immediately desist using the
5 Jackson Street parking lot, order Brookland Union to
6 tear up the pavement, order Brookland Union to remove
7 the chain link fence and to immediately replace it
8 with a suitable alternative and order Brookland Union
9 to landscape and maintain the property. Thank you
10 very much. We do appreciate it.

11 At this point, I think we're going to go
12 directly to any cross examination questions that you
13 have of the witnesses that have presented testimony.

14 PASTOR MALLOY: I don't have any
15 questions. I just want to make a statement.

16 CHAIRPERSON GRIFFIS: Okay. Good.

17 PASTOR MALLOY: And then I'll be through.

18 CHAIRPERSON GRIFFIS: Excellent. Board
19 Members, questions? Any other clarification
20 questions?

21 COMMISSIONER JEFFRIES: I have a quick
22 question and if you could respond succinctly? Before
23 this parking lot was constructed by the church, how
24 was the parking situation in the neighborhood?

25 MR. MCKAY: It was good. It was good.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER JEFFRIES: So on Sundays, no
2 problem?

3 MR. McKAY: No, no problem.

4 COMMISSIONER JEFFRIES: There were enough
5 parking --

6 MR. McKAY: No problem.

7 COMMISSIONER JEFFRIES: -- on-street
8 parking and so forth?

9 MR. McKAY: On-street parking was great.
10 All on Jackson Street for three or four blocks, along
11 14th Street three or four or five, six blocks, all
12 around the church there was parking to be had by
13 anyone even running late. They could find a parking
14 space within two blocks of the church.

15 COMMISSIONER JEFFRIES: Okay. Thank you.

16 MR. McKAY: Sure.

17 CHAIRPERSON GRIFFIS: Any other questions
18 from the Board, any follow-up? Very well. Thank you
19 very much, Mr. McKay.

20 MR. McKAY: Sure.

21 CHAIRPERSON GRIFFIS: We appreciate all
22 the documentation you put in and the witnesses you
23 called. Let me ask is there anyone else present to
24 provide testimony on this application, persons present
25 in support of the application or in opposition of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 application? Any other persons present? Very well.
2 Not noting any other testimony to be provided, we'll
3 turn it over to you for closing remarks.

4 PASTOR MALLOY: Thank you, sir. We truly
5 as a church have tried to be in compliance with all of
6 the rules and regulations. In fact, I looked at my
7 file and I do have a copy of the civil engineer who
8 gave us a design for the parking lot with all of the
9 topographic surveys, the technical engineering and all
10 of this at the cost of \$9,500, which we paid through
11 a recommendation through DCRA.

12 We have tried to be a good church and a
13 picture is worth a thousand words. I think we have a
14 picture of the old, and of course it was shown, many
15 pictures of the old dilapidated house, the condemned
16 house and it was an eyesore. It really was. And we
17 wanted to have a better appearance. And even today in
18 our community, in Brookland, there are many houses
19 with junk cars in their yards and there are many who
20 have not cleaned up their properties and all other
21 sorts, but yet, we have been singled out as being
22 contrary.

23 We paid thousands of dollars to be in
24 compliance, as I indicated, to do the right thing.
25 And we are about to do good. We want to do good. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 still want to know about our right as a church to have
2 the parking lot, as I mentioned about this particular
3 reference, and I hope we can get some kind of input
4 and investigation about that. We truly want to be
5 good neighbors.

6 Mr. McKay mentioned about the fact of the
7 crime area. There has not been any break-in in our
8 area. There has been no illicit activity in that
9 parking lot area since its inception, since we put it
10 up two or three years ago. We have had a good
11 relationship with the police, who come by and give us
12 assurances about our activities and we're going to
13 continue to do all we can to make our community a good
14 one and a safe one.

15 Ms. Michelle Sedgewick mentioned the fact
16 about, and I thought a positive note, and we do want
17 to have the approval and sanctioning of the community
18 members in terms of, how this property might look, if
19 this is going to be a factor in any kind of approval.
20 Just to tear down the fence and landscape it without
21 any use for our purposes would be self-defeating.

22 And so, therefore, again we will stand on
23 all of the things that we have tried to do honestly
24 and purposefully and if we have caused any harm to
25 anyone along the way, we certainly regret that very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 much. That's not our intention as a church. We are
2 about to do good works. And so if Dr. Lanier wants to
3 say anything else, the chairman of our trustee board,
4 I have no other comment to say. I appreciate your
5 patience and diligence in all this time.

6 CHAIRPERSON GRIFFIS: Thank you.

7 MR. LANIER: I would just like to just say
8 one thing, sir, and that is that we certainly do want
9 to comply. We will comply with -- I will insure that
10 the issues that are raised here will be answered.
11 Secondly, it's just we want to do all we can. Mr.
12 Boston was here and indicated that we did meet a
13 couple of times on my watch and we attempted to offer
14 a compromise and tried to compromise.

15 And one of the things that was raised by
16 Mr. Porter concerning the fence and our enclosed
17 parking in the close proximity to his house. For some
18 time now, we have had front-end parking only and we
19 had a barrier there, so we -- you know, as I said,
20 when I got involved, when I saw you last summer, we
21 started working this and it really was inside out. So
22 we will comply. Thank you.

23 CHAIRPERSON GRIFFIS: Thank you very much.
24 I appreciate everyone's time and all of the important
25 information that has come into the record. A couple

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of quick comments and then I'll engage the Board
2 whether they wanted to proceed today. And I
3 appreciate the closing remarks and really it's an
4 awful lot about compliance and also being good
5 neighbors.

6 And again, I want to reiterate that
7 certainly we are not here to gather information on the
8 members or the functioning of the church at all. And
9 the aspect of compliance, that's exactly what we're
10 here to do. We're here to measure whether our
11 regulations set forth for this zone district allows
12 this to happen and under what parameters it does allow
13 it to happen.

14 I take issue with one of the closing
15 remarks in that the picture of an eyesore and look how
16 you have taken down a building and now isn't it better
17 off. It is a judgment call, one I don't agree with,
18 but nonetheless it factors into the entire
19 application, how we look to the special exception.
20 The special exception is extensive. There's no
21 question about it. This is something that is deemed
22 compatible, but only when it meets numerous criterion
23 in the regulations.

24 In fact, an entire chapter has to be
25 complied with in order for this to meet a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exception criteria and you fall outside of even those
2 and therefore need a variance relief. We have talked
3 all about this. I'll open it up further to Board
4 Members for last comments, questions if need be or
5 directions if they have.

6 VICE CHAIR MILLER: Mr. Chairman, you
7 know, I was kind of struggling with whether or not we
8 want to continue this to give the applicant an
9 opportunity to fill in the record more based on, you
10 know, their assertions that they will comply and they
11 want to comply.

12 However, I'm ready to move forward today,
13 because I think that this case has a history going
14 back years and I think that the applicant hasn't come
15 forward with any good explanation as to why they
16 couldn't be fully prepared today, especially based on
17 Office of Planning's communication with them. So, you
18 know, others may feel differently, but, at this point,
19 I would be ready to make a motion.

20 CHAIRPERSON GRIFFIS: What's your motion?

21 VICE CHAIR MILLER: My motion is to deny
22 the Application 17454 of Brookland Union Baptist
23 Church for a special exception to establish an
24 accessory parking lot, 24 spaces, serving a church
25 under section 214 and 2116.5, and pursuant to 11 DCMR

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 section 3103.2, a variance to allow the accessory
2 parking spaces to be located over 200 feet away from
3 the principal church use under subsection 214.3 at
4 premises 1419 Jackson Street, N.E.

5 CHAIRPERSON GRIFFIS: Is there a second?

6 BOARD MEMBER MANN: Mr. Chairman, I'll
7 second.

8 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.
9 Speak to the motion?

10 VICE CHAIR MILLER: Speaking to the
11 motion, I would start off by saying, I did say this
12 earlier, that when an applicant seeks relief before
13 the Board, they have the burden of proof to at minimum
14 establish how they meet the requirements for the
15 relief that they are seeking. And in this case, there
16 was almost no attempt to even try to address the
17 requirements of section 214 after Office of Planning
18 indicated to them in the process that they needed to
19 address the tests.

20 There was no effort, at least as far as I
21 can see in the record, of once Office of Planning and
22 the Department of Transportation indicated how they
23 were deficient in identifying ways in which they would
24 meet the requirements. They didn't respond to that.
25 They didn't make a case for a variance with respect to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 their uniqueness or their practical difficulty in
2 meeting the requirements or addressing the adverse
3 requirements which were so fully addressed by the
4 opposition in this case.

5 We have a very full case by the Office of
6 Planning in opposition, but we have almost no case by
7 the applicant themselves, in my view. Plus, I also
8 find it very disturbing that when we dealt with this
9 case in the past, we gave them the opportunity to
10 withdraw the case earlier, noting that also at that
11 time they hadn't met the requirements and we gave them
12 the time to do that. And in that time, they seemed to
13 have gone ahead and illegally constructed a parking
14 lot for the approval that they were seeking from his
15 Board.

16 So given this kind of a history, which is
17 very disturbing, on top of basically they don't meet
18 the tests. They just have not even addressed the
19 tests.

20 CHAIRPERSON GRIFFIS: Very well. Thank
21 you, Ms. Miller. Others? Mr. Mann?

22 BOARD MEMBER MANN: The only thing that I
23 would add in addition to that is that as you very
24 carefully walked them through the provisions of the
25 regulations and allowed them an opportunity to answer

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 today, even then I heard answers that were contrary to
2 the requirements of the regulations, particular as it
3 pertains to section 2303.

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you. Others?

6 BOARD MEMBER ETHERLY: Thank you very
7 much, Mr. Chair. I'm going to speak in support of the
8 motion. I agree wholeheartedly with the comments that
9 have been made by my colleagues and, in particular,
10 the difficulty that Mrs. Miller alluded to with regard
11 to what we were confronted with here in this case.
12 Let me be very clear that there is, I think, in no way
13 any argument that this church, in particular, and many
14 of our churches here in the city have needs as they
15 relate to parking for the members of their
16 congregation.

17 I mean, clearly, it's something that's
18 been discussed in much larger forms and this decision,
19 I don't think passes judgment on that. But what is
20 very clear about the Zoning Regulations and this is
21 where I struggled, but I think ultimately have to
22 adhere to the responsibility that we have as Board
23 Members, what's very clear is that there is a process
24 that you have to follow in order to achieve that
25 relief, if you will.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Very detailed questions that have to be
2 answered, very detailed requirements that are laid out
3 by the Zoning Regulations and I think the Board was
4 very generous today in terms of trying to walk through
5 that. My concern was the questions just -- the sheer
6 breadth of questions, the complexity of the issues
7 that are still left unresolved, quite frankly, I just
8 don't think the church would have reached that bar
9 even with an additional two weeks to compile those
10 answers.

11 I mean, the very basic details around site
12 plan, around landscaping, around the very critical
13 issue of storm water runoff, these are just not run of
14 the mill issues. They get resolved very quickly.
15 They often times take months of preparation and
16 examination, if you will, in order to get to this
17 point before the Board.

18 I share Mrs. Miller's concern about the
19 history that we have here and I recognize, Pastor
20 Malloy, that in part that history may not have
21 involved you, but it did, indeed, establish the record
22 for this Board and for the church as an applicant to
23 look to prior to coming here. And so I share Mrs.
24 Miller's concern that we didn't have a better sense of
25 preparation on the part of the church in terms of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 dealing with these issues.

2 But I want to be very clear that I don't
3 view and I don't think any of my colleagues view this
4 outcome, as it appears to be heading, as a statement
5 that there is no place for parking on the part of a
6 church in this community or elsewhere in the city.
7 It's just that a process and clear regulations that
8 have to be followed in order to get that parking and
9 we just didn't have the adherence to the process in
10 the way that I think we would need to.

11 I'm sure I share my with my colleagues
12 when I say we wish the church continue good works.
13 You emphasized that quite a bit and I don't think that
14 factor is lost on anyone. But again, there are
15 certain procedures and regulations that have to be
16 followed here. And I think there just wasn't a strong
17 enough case made that you were going to be able to
18 meet those. Thank you, Mr. Chair.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you very much, Mr. Etherly. Others?

21 COMMISSIONER JEFFRIES: I agree with all
22 of the comments that have been previously made and I
23 would support the motion.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you very much, Mr. Jeffries. I think one of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 things that I'm hearing in all of the comments, of
2 course, in the special exception and, indeed, the
3 variance, but also 2114 as laid out is whether this
4 would create any objectionable conditions to the
5 surrounding neighborhood and we talked about a lot of
6 those that were inputted here.

7 And what I'm understanding and hearing and
8 I agree with is that there aren't elements. Even if
9 we were to take the idea of giving direction to do it,
10 there aren't elements that could diminish those enough
11 that it would rise to the level of approval by this
12 Board. And one of the larger ones was really touched
13 upon briefly in the oral testimony, but I think in the
14 written submission substantially, is the character of
15 the neighborhood itself and what this does in an R-1-B
16 Zone, but then specifically in this, not to mention
17 the difficult and unsafe conditions that arise with
18 that amount of vehicle traffic in through the alley
19 and off of Jackson Street, as was mentioned.

20 There it is. Any other comments,
21 questions? If there's no further deliberation by the
22 Board, we do have a motion before us. It has been
23 seconded. I would ask for all those in favor to
24 signify by saying aye.

25 ALL: Aye.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: And opposed?
2 Abstaining? Ms. Bailey, if you wouldn't mind?

3 MS. BAILEY: Mr. Chairman, the Board has
4 voted 5-0-0 to deny the application. The motion was
5 made by Mrs. Miller, seconded by Mr. Mann, Mr.
6 Griffis, Mr. Etherly and Mr. Jeffries support the
7 motion.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much. Thank everyone for all of your efforts
10 and your input on this and we do appreciate everyone's
11 patience in getting to this this morning.

12 That being said, we are going to take a
13 moment here.

14 (Whereupon, the Public Hearing was
15 recessed at 3:41 p.m. to reconvene at 4:09 p.m. this
16 same day.)

17
18
19
20
21
22
23
24

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 4:09 p.m.

3 CHAIRPERSON GRIFFIS: Very well. Good
4 afternoon, ladies and gentlemen. Let me call to order
5 our afternoon session of the 18th of April 2006. I do
6 appreciate everyone's patience. I'm going to get
7 through the opening remarks very briefly as I will ask
8 you all to recall my opening remarks last time we
9 called this to order.

10 We will be picking this up as this is a
11 continuance. I will get to that order momentarily.
12 Let me just restate the fact that I would have
13 everyone turn off their cell phones and beepers. We
14 noted today that ever our Blackberrys seem to disrupt
15 the transmissions of these. So, if you can, we can
16 turn all of those mechanisms off.

17 Also, if you have not provided previously,
18 it would be a good indication if you're going to
19 address the Board today, fill out two witness cards.
20 They are located at the table in front where you'll
21 provide the testimony and also at the table where you
22 entered into the hearing room.

23 Let me ask if anyone is here present today
24 that was not previously sworn in for our past
25 proceedings, just a show of hands. Excellent. At

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this time, what I'm going to do is say a very good
2 afternoon to Ms. Bailey who I have interrupted in the
3 middle of her lunch to come out. But if you would all
4 stand, those who have not been previously sworn, and
5 she will swear you in at this time.

6 MS. BAILEY: Would you, please, raise your
7 right hand?

8 (Whereupon, the witnesses were sworn.)

9 CHAIRPERSON GRIFFIS: Excellent. Thank
10 you all very much. And to that, let us go directly
11 into any preliminary matters. I will note the fact
12 that, well, preliminary matters are those -- I note
13 the fact that we had two preliminary matters that we
14 dispensed with at 1:00 today, which are the two other
15 cases on the hearing.

16 Ms. Bailey, I will ask you if you're aware
17 of any other preliminary matters for the Board's
18 attention immediately.

19 MS. BAILEY: No others, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Very well. Then let
21 us assess and call the first case or the last case
22 scheduled for today. And, of course, if there are any
23 questions in terms of procedure, rules, regulations
24 that people are unaware of that I would have covered
25 in my openings, I will take those questions also as we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 proceed. Hopefully, there won't be any or I don't
2 anticipate any, but let's call 17446.

3 MS. BAILEY: And, Mr. Chairman, I will be
4 reading it as it was -- well, as it was amended. In
5 other words, it was advertised one way. The applicant
6 amended the application, so I will be reading it based
7 on my understanding of how it is now, the relief that
8 is being requested now.

9 And that is Application, as you said, sir,
10 No. 17446 of Pauline S. Ney, and it's pursuant to 11
11 DCMR 3104, for a variance relief from lot occupancy
12 requirements under section 403, and nonconforming
13 structure provisions under subsection 2001.3 and
14 2002.4, to construct four residential units above an
15 existing one-story retail structure at premises 2160
16 through 2162 California Street, N.W. The property is
17 zoned R-5-B and it's located in Square 2530 on Lots 99
18 and 100.

19 And, Mr. Chairman, as you know, this is a
20 continuation from a previous hearing.

21 CHAIRPERSON GRIFFIS: Thank you very much.
22 I do appreciate that. And, as I recall, we were going
23 to start up with the Government reports starting with
24 the Office of Planning. I have noted that the ANC has
25 a scheduling problem. Is that correct? Any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 difficulty with the applicant or the participants,
2 other participants, in letting the ANC go first?
3 Raise of hands of objections.

4 Not noting any objections, why don't we
5 call the ANC? Certainly. You're just going to turn
6 your microphone on. There is a button on the base.
7 Perfect. And you're just going to state your name and
8 address for the record and you can proceed.

9 MS. PERLMUTTER: Thank you so much. My
10 name is Sandra Perlmutter.

11 CHAIRPERSON GRIFFIS: Oh, it isn't on.
12 Just push it. There it is.

13 MS. PERLMUTTER: My name is Sandra
14 Perlmutter. I live at 2153 California Street,
15 Washington, D.C., Apartment 502, 20008. Are we
16 waiting for the other members or should I -- no?

17 CHAIRPERSON GRIFFIS: We're going to act
18 like they are here. They are going to read the entire
19 transcript of what we're doing, but momentarily Mr.
20 Etherly will be joining us again.

21 MS. PERLMUTTER: I hope so. Thank you,
22 sir. Mr. Chairman, Members of the BZA, I apologize
23 for not being able to attend the last hearing and I am
24 sorry my colleague, MaryEva Candon, cannot be with us
25 today. There are two commissioners in ANC-2D.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 By way of introduction, once again, my
2 name is Sandra Perlmutter. I have been Chair of ANC-
3 2D since January 2002. I have come to know and I
4 would say 99.9 percent of the time come to love my job
5 as a commissioner. I have no comment on the 1 percent
6 that I'm not talking about. And having spent since
7 1:00 this afternoon today in this room, I have a
8 deeper appreciation of your job, so thank you very
9 much. It was a very interesting case before us.

10 I am here today to go on record with the
11 ANC's opposition to the application before you. Our
12 neighborhood is unique. Our neighborhood is small.
13 Our neighborhood is home to many international
14 visitors who live and work to sustain and improve our
15 global community. Our neighborhood houses a very
16 large church with day care facilities, language
17 classes and more than 1,000 worshippers in a given
18 week.

19 Our neighborhood is crowded and as many
20 residents rely on street parking, and in our
21 neighborhood there resides open-minded citizens who
22 treasure our history and value our ever-changing
23 complexion of our city. As citizens I have no doubt
24 you feel the same about your street, your neighborhood
25 and your community.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I for one have lived through many changes
2 in this city, both large and small. Born in the old
3 Sibley Hospital located on a plot nearby what is now
4 Gonzaga High School, I lived in Anacostia until I was
5 5 years-old. My family moved to Silver Spring,
6 Maryland where as a teenager I recall the building of
7 the Capital Beltway right almost in our backyard.

8 Following the death of Martin Luther King
9 in June 1968, the long days and nights of civil unrest
10 that followed, it took days, weeks, months and many
11 years on the part of local leaders, urban planners and
12 others to help restore our streets and a collective
13 renewal of spirit and hope for our nation. And having
14 moved to Capitol Hill following my college years, I
15 recall the disrepair of my lovely neighborhood as the
16 Capitol South Metro Station was built directly below
17 my home. And would you believe it or not, I'm only 29
18 years-old.

19 I understand there were Zoning Regulations
20 in the District of Columbia as early as the 1920s, of
21 course followed by subsequent acts and amendments.
22 Given the accounting of my childhood history, I expect
23 you might think that I lived during the '20s. I did
24 not, but these regulations have for many years stood
25 to assist our residents as our city has grown.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The ANC does not believe the applicant's
2 proposal today is in harmony with the interpretation
3 and the application for the public good of these
4 regulations. I would like to indulge you for one
5 moment, please. Just for a few minutes I would ask
6 that you put your pen and pencils down, please. I
7 would like for you to imagine for a moment yourself
8 back in your own living room or at your breakfast
9 table this very moment. The day couldn't be more
10 crisp, more bright and beautiful.

11 Your phone rings, hypothetically of
12 course, and you learn your next door neighbor is
13 planning to make changes to his or her home. What
14 might this mean to you, your family and adjacent
15 residents? Should your neighbor be permitted to build
16 an addition to his or her home that would essentially
17 block more than 80 percent of the light in that very
18 living room that you're sitting, as well the remainder
19 of your entire property?

20 Do you think it might have any
21 implications on its resale value? What sacrifices to
22 your quality of life would you need to make if your
23 neighbor's plans were then approved? When it comes to
24 selling, could you actually stay afloat financially,
25 seeking a comparable property? Would you have to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 forfeit the savings for your child's education, your
2 spouse's retirement perhaps?

3 And as you're sitting in your living room,
4 what might be the impact of your quality of life,
5 light and noise since your neighbor built an addition
6 to his or her home with a roof deck designed for
7 leisure and entertainment not more than 20 feet from
8 your living room window, the very window you were
9 looking out earlier today?

10 With your neighbor's plans to build, how
11 is it that upon purchase, a place you specifically
12 chose to start your family, that the rooms now would
13 be completely void of light and the place where your
14 children sleep would be directly adjacent to a roof
15 deck? How will you afford your soundproof windows or
16 blinds and how is it that the privacy you thought you
17 once had in your home invested in your life savings is
18 compromised?

19 Mr. Chairman, the telephone call that I
20 received more than a year ago regarding the
21 applicant's project before you was real. Unlike
22 yourselves who can only imagine, our residents are now
23 facing this reality every day. They have come
24 together to form an organizing committee that have
25 included representatives from the Sheridan-Kalorama

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Neighborhood Council, the Sheridan-Kalorama Historical
2 Association, properties of the California House and
3 the California Court and many others.

4 There have been ANC meetings addressing
5 this issue, one meeting with over 170 participants,
6 unheard of in our neighborhood as well as probably
7 others. Today you will hear in much further detail
8 the issues of compliance and that of the public good.
9 For the record, I would like to read the resolution
10 adopted by the ANC last evening.

11 "ANC-2D has reviewed the revised plans of
12 the Ney family for its property at 2160-62 California
13 Street, N.W., and has heard and considered the
14 concerns raised by the neighborhood. There can be no
15 doubt that the neighbors adjacent to the property,
16 those residing near the corner of California and
17 Phelps, N.W., as well as other ANC-2D residents, are
18 against the proposed development of the Ney property
19 for many reasons, including the potential negative
20 impact on property values, on light, on traffic
21 congestion, on noise, on pollution, on public safety
22 and much more.

23 The ANC-2D Commissioners find that the
24 revised plans attempts to address the neighbors'
25 concerns. However, the neighbors' overwhelming

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 opposition to the Ney's proposal past and current, and
2 particularly the reality that at least 10 of the 15
3 unit owners of the Woodrow Cooperative immediately
4 adjacent to the proposed development will be severely
5 and detrimentally impacted, leads us to vote against
6 the 2160-62 California Street, N.W., development
7 proposal and to lend our great weight to oppose the
8 development." Thank you very much.

9 CHAIRPERSON GRIFFIS: Thank you very much.
10 We appreciate that testimony today and also the
11 written submission that you have provided into the
12 record. And let me just ask. In the last couple of
13 statements, in terms of the 10 to 15 units that might
14 be impacted, you're talking about the light and the
15 air and the noise, as you have indicated, of this roof
16 terrace that is proposed? Is that correct?

17 MS. PERLMUTTER: In my understanding, it's
18 not only the roof terrace. It's the entire building
19 which blocks the light and will contribute to the
20 noise and does contribute to the economic hardship
21 that it could pose to the resale value of the
22 property.

23 CHAIRPERSON GRIFFIS: Right.

24 MS. PERLMUTTER: Which includes all the
25 properties, because it's a cooperative.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Right. Indeed. No,
2 I appreciate that. Ms. Miller?

3 VICE CHAIR MILLER: Good afternoon. I was
4 wondering on what basis you have determined that 80
5 percent of their light would be blocked?

6 MS. PERLMUTTER: This is what -- when I
7 have been listening, there have been -- if you notice
8 on the pictures, there are probably affected
9 buildings, I mean, affected windows on a number of
10 these floors, the second floor, the third floor
11 properties, as well as the first floor properties.

12 VICE CHAIR MILLER: So you are relying on
13 those pictures somewhat. Is that correct?

14 MS. PERLMUTTER: I was relying on the
15 pictures and the information that I received, yes.

16 VICE CHAIR MILLER: And then how do we
17 know how long those shadows remain there blocking the
18 light?

19 MS. PERLMUTTER: I'm talking about should
20 a structure be built. I don't believe it would be
21 shadows. I would actually believe it would be the
22 structure that would be blocking the light.

23 VICE CHAIR MILLER: Okay. That's what I
24 mean.

25 MS. PERLMUTTER: That's from what I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 understand.

2 VICE CHAIR MILLER: Okay. So you
3 extrapolated from that. Okay. And is there any other
4 information that you relied on to conclude that, you
5 know, it would be detrimental to public safety,
6 pollution, etcetera, or is it just general perception?

7 MS. PERLMUTTER: I believe what you'll
8 hear today are what I have been hearing at my ANC
9 meetings, which are more factual information that
10 people have been collecting. I believe the job of the
11 ANC Commissioners is to sit and listen to what it is
12 that our residents have been saying and the hard work
13 that they have been doing, which I certainly believe
14 to be true.

15 VICE CHAIR MILLER: Thank you.

16 CHAIRPERSON GRIFFIS: Thank you. Any
17 other questions from the Board? Very well. Thank you
18 very much. Let's just see if there is any cross
19 examination? Any cross, cross from the parties? Does
20 any party in opposition have any cross examination?
21 None. You get off fairly easily.

22 MS. PERLMUTTER: I apologize for having to
23 leave. I have to get back to work.

24 CHAIRPERSON GRIFFIS: Not a problem at
25 all.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. PERLMUTTER: Thank you.

2 CHAIRPERSON GRIFFIS: Enjoy the day for
3 the rest of us. Very well. Let's proceed then right
4 into the Office of Planning's report.

5 MR. LAWSON: Thank you, Mr. Chair and
6 Members of the Board. My name is Joel Lawson. I'm
7 with the D.C. Office of Planning.

8 Very briefly, BZA Case 17446 is to permit
9 the construction of a two-story residential addition
10 on top of two existing historic contributing
11 structures on California Street. The existing
12 structures are nonconforming for lot occupancy, rear
13 yard and use as they have commercial use in a
14 residential zone. The square and lots across both
15 streets are largely developed with multiple unit
16 residential structures which generally exceed current
17 Zoning Regulation limits.

18 The owners originally proposed the
19 construction of a three-story residential addition on
20 top of the existing one-story commercial structures.
21 The applicant has subsequently modified the proposal
22 to reduce the addition to two stories, reduce the size
23 of the second and third floor additions and to
24 eliminate floor area ratio and rear yard setback
25 variance requests.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Alterations to the external street
2 elevations would appear to be minimal under the
3 revised submission when compared to the original
4 submission, and the design would appear to address
5 comments made by the Historic Preservation Review
6 Board as part of its review.

7 In addition to the upper floor changes,
8 the amount of nonconforming commercial space on the
9 ground floor would decrease to provide an additional
10 residential unit. This would be in keeping with the
11 intent of the Zoning Regulations, which generally
12 support the elimination of nonconforming uses. Under
13 the amended application, variances to lot occupancy
14 for the second story addition to permit additions to
15 an existing nonconforming structure and to permit
16 structural alterations to a building containing an
17 existing nonconforming use are all required.

18 Again, subsequent to filing our report, OP
19 received the full text and drawings of the amended
20 scaled-down application. The submission supports
21 preliminary analysis contained in the OP report. OP
22 continues to support this proposal as a reasonable
23 solution which addresses major issues related to the
24 Zoning Regulation test, to historic preservation and
25 to neighborhood impact.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Reducing the second floor lot occupancy to
2 the permitted level of 60 percent or 160 square feet
3 reduction would make the second floor units less
4 functional with little positive impact. This would
5 likely not decrease overall density since the second
6 floor area lost could be moved to the third floor,
7 which is considerably under permitted lot occupancy.

8 Likewise, converting the entire ground
9 floor to residential use, as anticipated by zoning,
10 would eliminate the request to vary section 2002.4.
11 It would also result in the loss of a commercial use
12 that the community has indicated support for.
13 Finally, the ability to eliminate the variance to
14 section 2001.3 is highly restricted by the historic
15 contributing status of the existing nonconforming
16 structure.

17 In summary, OP concludes that the property
18 exhibits uniqueness with respect to the existing
19 landmarked building and the existing use, which
20 neighborhood residents have indicated to OP they wish
21 to retain. Elimination of the commercial use is
22 supported by the Zoning Regulations, but would likely
23 make additional development on the site easier from a
24 zoning perspective.

25 However, the applicant is attempting to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 retain the commercial use. The upper story
2 residential addition responds to the difficulties
3 associated with this site and is within what is
4 normally permitted for this zone for height and floor
5 area ratio. As such, OP continues to recommend that
6 this proposal be approved.

7 And that concludes my testimony and I'm
8 available for questions. Thank you.

9 CHAIRPERSON GRIFFIS: Excellent. Thank
10 you very much. Any questions from the Board of the
11 Office of Planning? Ms. Miller?

12 VICE CHAIR MILLER: Good afternoon, Mr.
13 Lawson. I was wondering if you could comment on the
14 claim that there would be detrimental impact with
15 respect to the light on the apartment building that is
16 neighboring?

17 MR. LAWSON: Sure. We haven't seen a
18 detailed light, shade and shadow analysis. We do note
19 that the properties that would be most affected face
20 not directly north, but approximately north, northwest
21 I guess. So it's not south facing light that would be
22 affected. There probably would be some effect.

23 We note that the applicant has set the
24 upper floors back, which would reduce that amount of
25 impact with the exception of the area of the building

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 directly along the street where HPRB has indicated
2 that they would prefer that the upper stories mimic
3 the lower floor to maintain the street presence of the
4 existing building. So that's it.

5 CHAIRPERSON GRIFFIS: Follow-up?

6 VICE CHAIR MILLER: Yes, just on the last
7 thing you said about HPRB. Was there a tradeoff there
8 between blocking the light and meeting the HPRB
9 requirement?

10 MR. LAWSON: To be honest, I'm not sure
11 whether if that portion was set back -- this is the
12 portion on Phelps Place. It's a small portion of the
13 new construction on the second floor which extends out
14 to the limits of the ground floor, the existing
15 footprint. And that is directly across from existing
16 windows on the property to the, I will call it to the,
17 south even though it's not directly south, directly to
18 -- for the properties to the south.

19 So being able to push that section back
20 may further decrease the amount of impact, whether
21 that be light or privacy, but HPRB again has indicated
22 a strong preference that the building lines along the
23 street -- that the footprint along the street for the
24 addition be maintained for the stories up above.

25 CHAIRPERSON GRIFFIS: Any other questions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR MILLER: Do you have any other
2 comments with respect to the other adverse impacts
3 that the ANC raised, pollution, public safety, you
4 know, any of the other ones, economic?

5 MR. LAWSON: Well, I have just received
6 this, so I haven't had time to look at it in any
7 detail. I would note that the application that is
8 being proposed is within permitted FAR for the zone,
9 so it's not really a density issue, that it's within
10 the permitted height under the zone, that having
11 additional residences on the site could arguably make
12 the street somewhat safer through the provision of
13 eyes on the street and windows on the street and
14 questions like that, that the grocery store is being
15 maintained, which I believe the neighborhood generally
16 supports.

17 In terms of traffic congestion, even if
18 parking was required on this property, it would be --
19 the developments proposed would require two parking
20 spaces. For four units you would more normally
21 anticipate four parking spaces, because I think most
22 developers would rather have one parking space per
23 unit. So we're talking somewhere between two and four
24 parking spaces. And while we would welcome those
25 being located on-site, we recognize that the existing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 historic structure makes that somewhat somewhere
2 between difficult and impossible to do.

3 So in terms of congestion, you know, given
4 the density of development around it, you know, I
5 understand the neighbor's concerns. I know this
6 neighborhood fairly well and I have tried to park in
7 it many times and it's speaking of somewhat, you know,
8 difficult to impossible, that's kind of the state in
9 this neighborhood.

10 And so we would support the applicant in
11 some of their discussion of looking to provide
12 alternative parking for the residents of these units,
13 but the upshot is that the Office of Planning's
14 analysis is based on the Zoning Regulations and, in
15 this case, the Zoning Regulations, because of the
16 nature of the building, would not require parking on
17 this site.

18 VICE CHAIR MILLER: Thank you.

19 CHAIRPERSON GRIFFIS: Did any of the
20 concerns in terms of access to the basement level off
21 of Phelps, that areaway, animation and -- was that a
22 factor in your analysis at all as rising to the level
23 of any concern?

24 MR. LAWSON: Not greatly. We note that
25 there is no -- that access to parking in the basement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 level is impossible. They do note parking for, I
2 think, bicycles and scooters possibly in the basement
3 level. Scooter parking spaces are not -- don't
4 substitute for legal parking spaces. The applicant
5 would be free to do that or not do that as far as the
6 Zoning Regulations are concerned. So we would have no
7 comments on that.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you. Any other Board questions? Not noting any other
10 Board questions, does the applicant have any cross
11 examination of the Office of Planning? Cross, any
12 party? Yes?

13 MS. BEGGS: Mr. Lawson, my name is
14 Kathleen Beggs. I live at 2205 California Street,
15 N.W., and we have met before. I have reviewed your
16 report and I have a number of questions about it.

17 One of the first things I wanted to ask
18 you is I understand now that the applicant plans to
19 put a residence on the first floor of the store,
20 correct?

21 MR. LAWSON: That's my understanding, yes.

22 MS. BEGGS: And, in your view, does that
23 not invoke the provisions of section 2003.1 and
24 2003.3?

25 MR. LAWSON: We would actually normally

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 look to the Zoning Administrator to make
2 interpretations of the Zoning Regulations, but that
3 issue has not been brought up yet by the applicant.

4 MS. BEGGS: Are you familiar with the
5 Lenkin case?

6 MR. LAWSON: You did send me information
7 on the Lenkin case.

8 MS. BEGGS: Did you review that case?

9 MR. LAWSON: I very briefly read through
10 the file.

11 MS. BEGGS: Yes, that was a case of nearly
12 identical circumstances to this one where the
13 applicant --

14 CHAIRPERSON GRIFFIS: I think he answered
15 the question, right?

16 MS. BEGGS: Beg your pardon?

17 CHAIRPERSON GRIFFIS: He answered the
18 question, right?

19 MS. BEGGS: No, I was going to ask him a
20 follow-up question on it.

21 CHAIRPERSON GRIFFIS: Okay. Follow-up.

22 MS. BEGGS: Yes, he said he read it, and
23 so I was going to say it was virtually identical
24 circumstances to this case, was it not?

25 MR. LAWSON: I wouldn't -- to be honest,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I wouldn't comment on that. It's a legal case. Fine
2 nuances can make a big difference. It was a different
3 case, so I wouldn't be able to comment on whether it
4 was the same or not.

5 MS. BEGGS: Well, generally speaking, you
6 would agree that it was the same circumstance of an
7 applicant wanting to stack some residences on top of
8 a nonconforming building in Foggy Bottom?

9 MR. LAWSON: That was part of the case,
10 yes.

11 MS. BEGGS: According to your report, the
12 Zoning Administrator would require parking here,
13 right?

14 MR. LAWSON: The Zoning Administrator has
15 an interpretation of the Zoning Regulations that
16 parking may be required on this site. To be honest,
17 I'm not quite sure where that is in the status of
18 things right now. If that is the case and if parking
19 is required, then the applicant would be required to
20 provide or to seek relaxation from the parking
21 requirement.

22 MS. BEGGS: Now, you have a line in your
23 report that I have found. Actually, I just didn't
24 understand it. You wrote that there were difficulties
25 associated with retention and restoration of this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 structure. I had not heard that before. What are
2 those difficulties?

3 MR. LAWSON: The structural difficulties
4 noted by the applicant in their application.

5 MS. BEGGS: There are structural
6 difficulties with retaining the building in its
7 current state?

8 MR. LAWSON: That's what the applicant
9 states, that there are structural upgrading to the
10 building, structural upgrading to the building is
11 necessary. I assume you read the application as well
12 and that is in their application.

13 MS. BEGGS: But that is just a matter of
14 money, right?

15 MR. LAWSON: Not necessarily. That would
16 be a question better for the applicant. I'm sorry.

17 MS. BEGGS: Do you know what the present
18 income or expenses of that building are?

19 MR. LAWSON: To be honest, I do not.

20 MS. BEGGS: Did you make any site visits
21 to the store?

22 MR. LAWSON: I made a number of site
23 visits to the area, yes.

24 MS. BEGGS: Did you have any opportunity
25 to observe the traffic conditions at that particular

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 corner?

2 MR. LAWSON: Well, certainly when I was
3 there, not only when I was doing site visits, because
4 I have said I have been in the area many times. There
5 is no question that both traffic and parking are an
6 issue, you know, in this neighborhood as they are in
7 many neighborhoods. I have spent, you know, many,
8 many long minutes trying to find parking in this
9 neighborhood. It's not easy.

10 MS. BEGGS: Yes. Are you aware of the
11 activities that are currently going on at the church
12 that sits opposite to the store?

13 MR. LAWSON: I am not.

14 MS. BEGGS: You make the point that the
15 neighborhood is already heavily concentrated with
16 structures that predated the Zoning Regulations and,
17 therefore, would probably be nonconforming under the
18 current set of regulations, correct?

19 MR. LAWSON: They certainly appear to be,
20 yes.

21 MS. BEGGS: Yes. And so the neighborhood
22 is already probably unduly concentrated under the
23 application of current Zoning Regulations, correct?

24 MR. LAWSON: Well, no. Zoning Regulations
25 apply to individual properties. One property being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 over-built doesn't affect the neighboring property
2 from building up to the limits that the Zoning
3 Regulations would allow.

4 MS. BEGGS: I'm just trying to understand,
5 because there appears to be an argument in your report
6 that seems to be saying that since this neighborhood
7 is already heavily concentrated, we should make it
8 more concentrated.

9 MR. LAWSON: I would say that is not my
10 argument at all. My argument is that there is a three
11 part test in the Zoning Regulations and from the
12 Office of Planning's standpoint, we believe that they
13 have met that argument, particularly since they have
14 eliminated a fair amount of square footage to make it
15 conform to, for example, floor area ratio. So it's
16 not a density issue anymore.

17 MS. BEGGS: But, nevertheless, zoning
18 variances are being sought here, right, for the
19 purpose of adding more concentration to this
20 neighborhood?

21 MR. LAWSON: For the purposes of
22 constructing an addition onto the building, that is
23 correct. But unlike many of the existing buildings,
24 the additions in this case would conform to both
25 height and floor area ratio, so it's not a density --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that's what I mean by it's not a density issue as far
2 as the zoning test is concerned.

3 MS. BEGGS: What does lot occupancy go to?

4 MR. LAWSON: Lot occupancy goes to the
5 amount of the ground that is covered with building.

6 MS. BEGGS: But is that not a density
7 concern?

8 MR. LAWSON: Floor area ratio is how we
9 define density in the District.

10 MS. BEGGS: Okay. That's it for me.

11 CHAIRPERSON GRIFFIS: Anything else? Very
12 well. Thank you very much. Let's move ahead then
13 unless there is any follow-up questions from the
14 Board. Not noting any, I think we would be ready when
15 you're ready.

16 MS. BEGGS: Ready to go.

17 CHAIRPERSON GRIFFIS: As you assemble, I
18 will give you a moment, let me just get a show of
19 hands of persons that would like to provide testimony
20 today. Are there any persons here that are going to
21 provide? Okay. Excellent. Excellent. I would
22 assume some of you are going to be called up as part
23 of this presentation of this case, but let's move
24 ahead.

25 Before we do that, also, I want to make

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 note. I believe the ANC report has just been
2 submitted into the record and so I want to make sure
3 that everyone here gets that. I know I think we were
4 handed it up here and probably not enough copies.

5 We had two other filings, as far as I
6 understand, and that was it since our last, Exhibit 76
7 and Exhibit 77, both of which were from -- well, there
8 are supplemental statements that we'll get into now,
9 one of which was the case that was cited in cross and
10 also Harry Matz of 1835 Phelps Place's letter. Just
11 to make sure that everyone checks the record.

12 MS. BEGGS: Do you want us to proceed?
13 Okay. We're going to start with testimony from Helen
14 Starr who is going to discuss some factual matters,
15 but is largely going to make the opening statement
16 regarding the legal standards applicable here.

17 MS. STARR: My name is Helen Starr and I
18 think I previously gave my address and phone number
19 for the record. The applicant has requested variances
20 for lot occupancy and alterations to a structure
21 containing a nonconforming use, and we will show
22 through our discussion of applicable case law,
23 testimony and evidence that these should not be
24 granted as a matter of law and fact.

25 I would like to deal just briefly with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 variances that have not been requested. It is our
2 view that the applicant will not be able to go forward
3 with her proposed project without additional
4 variances. We have become convinced that she is
5 refraining from applying for those that she will need
6 in order to improperly seek to establish a lower
7 standard of proof.

8 She will need a variance from 2003.3 which
9 prohibits deleterious effects when an owner changes
10 the use he makes of a structure that contains a
11 nonconforming use. These include noise, traffic,
12 parking and loading considerations, illumination and
13 odor, among others, all of which are certain to occur
14 with the proposed project.

15 In the case of Association for
16 Preservation of 1700 Block of N Street v. the BZA, our
17 Court of Appeals was clear stating that when this
18 court found the requested variance to be a hybrid use
19 area variance, we applied the stricter burden of
20 proof, i.e., undue hardship. We will also continue to
21 assert that a correct --

22 VICE CHAIR MILLER: I'm sorry, I missed
23 the name of the case. I'm wondering if you could
24 repeat that.

25 MS. STARR: Preservation of 1700 Block of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 N Street. It's 384 Atlantic 2d 674.

2 VICE CHAIR MILLER: Thank you.

3 MS. STARR: We will also continue to
4 assert that the correct interpretation of 2100.6 will
5 require the applicant to obtain a parking space
6 variance and that that would be a hybrid variance
7 under Palmer v. BZA, which I believe is already in the
8 record from the previous.

9 Moving now to the three prong test, first
10 dealing with uniqueness. Applicant's request for all
11 of the variances must fail on the first prong of the
12 test. Applicant claims that her property is unique
13 primarily because the existing structure is a
14 contributing historic building. This is insufficient
15 under Myrick, that's M-Y-R-I-C-K, v. BZA. That's 577
16 Atlantic 2d 757.

17 The D.C. Court of Appeals stated in Myrick
18 that the fact that a piece of property or a structure
19 is located in an Historic District cannot satisfy an
20 applicant's burden of proving that the hardship is
21 peculiar to the property or structure. The OP staff
22 report expressly concludes that the property is unique
23 due to the presence of a contributing historic
24 building, but admits that, and I quote, "The property
25 itself is not unique." Because the property is not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unique, a variance cannot be granted because all three
2 prongs of the test can never be satisfied as they must
3 be.

4 In Capitol Hill Restoration Society v.
5 BZA, 534 Atlantic 2d 939, which cites an older case of
6 Taylor v. BZA, the court stated that "If the BZA were
7 to grant variances," and I am quoting now, "where the
8 hardship or difficulty is not peculiar to a particular
9 piece of property, similar requests could follow from
10 property owners similarly situated which, as a matter
11 of due process, would have to be granted."

12 Applicant's property is rectangular. It's
13 flat. It has no unusual topographical conditions and
14 it is of a similar size to others in the neighborhood.
15 It's attached to a small townhouse on a small lot and
16 its principal frontage is on Phelps Place, which is a
17 street exclusively of single-family buildings,
18 townhome structures with the sole exception being the
19 Woodrow Cooperative which is a small apartment
20 building.

21 The applicant has ignored these ordinary
22 conditions and attempted to obscure that the only
23 factor on which she can rely is that the property is
24 historic and has done so by referring to a confluence
25 of factors test, but she cannot do this successfully.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 One of the factors in this confluence that she relies
2 on does not relate to the property itself, but relates
3 instead to its longtime use, ironically its
4 economically advantageous, nonconforming use.

5 And the other factor she relies on derives
6 from the use that she wishes to make of the property.
7 Eliminating those factors which must be done, she is
8 left claiming only that the property is historic and
9 the law will not support her claim to uniqueness.

10 Moving to the second prong of the test
11 regarding proof of undue hardship or practical
12 difficulties. In the District of Columbia requests
13 such as this one by applicant are controlled by the
14 Lenkin case, which is spelled L-E-N-K-I-N. Lenkin
15 involved a building in Foggy Bottom that housed a
16 nonconforming use. It was an office in an R-5-B Zone
17 which is the same as the zone for the applicant's
18 property.

19 The owner in Lenkin wanted to convert a
20 part of the second floor of his building to conforming
21 residential use and to add on top a third floor with
22 conforming residential use. The BZA denied the
23 variance and the Court of Appeals affirmed saying
24 nonconforming uses may be continued only if no
25 structural alteration or enlargement is made or new

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 building erected. The court went on to say that
2 nonconforming uses are disfavored, so that any
3 interpretation of the regulations which expands the
4 prerogatives of nonconforming users is undesirable.

5 Lenkin has been cited approvingly in
6 numerous well-respected legal treatises and it was
7 adopted in 2003 by the State of New Jersey in a very
8 similar case with very similar facts to those before
9 the Board today, and the nonconforming use in that
10 case happened to be a real estate office.

11 Applicant's counsel's explanation at the
12 March hearing was inadequate to convince that Lenkin
13 does not control. While we contend that the proper
14 standard is hardship and not practical difficulties,
15 the Court of Appeals has acknowledged that in some
16 cases there is no practical difference between the
17 two. The Court of Appeals has also found some
18 requests for variances to be hybrid and, in
19 particular, parking space requirements have been found
20 to be hybrid and the higher standard of hardship is
21 applied.

22 Assuming for the sake of argument that the
23 applicant's burden is only practical difficulty, the
24 BZA found in Lenkin that even the lower burden of
25 practical difficulties had not been met and the facts

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in that case should have made the grant of the
2 variances far easier than in this case. The BZA
3 decision, the lower level, not the court decision, in
4 that case which was signed by the applicant's expert
5 witness, Mr. Sher, and certified to by him, stated as
6 follows.

7 "The applicant proposes to make
8 substantial alterations to the structure, including a
9 new third floor, a bay window and a rebuilding of the
10 courtyard." These are not minimal alterations to a
11 nonconforming structure. The proposed alterations
12 will not increase the lot occupancy nor exceed the FAR
13 and height requirements of an R-5-B District.

14 Still, the alterations are perpetuating
15 the subject nonconforming structure devoted to a
16 nonconforming use beyond the intent and purpose of the
17 Zoning Regulations. So the BZA denied the grant of
18 the variance to Mr. Lenkin and that was upheld by the
19 Court of Appeals.

20 The variance request must also fail
21 because applicant's only argument in support of her
22 request is economic, that her building must be
23 enlarged in order to be economically feasible. Case
24 law in the District of Columbia makes clear that this
25 is not enough even if it were factually true in this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 case.

2 In Palmer v. The District of Columbia, the
3 court said it is certain that a variance cannot be
4 granted where property conforming to the regulations
5 will produce a reasonable income, but if put to
6 another use will yield a greater return. And it went
7 on to say an inability to put property to a more
8 profitable use of loss of economic advantage is not
9 sufficient to constitute hardship. This position was
10 reaffirmed in the Barber case, 358 Atlantic 2d 326.

11 We have been trying to piece the actual
12 facts together and we think we have been able to do so
13 fairly well, and we have concluded that applicant's
14 property produces a reasonable income and seems to us
15 to be quite profitable. Based on her son's testimony
16 in March, at the hearing in March, it is clear to us
17 that the gross annual income from rentals is around
18 \$95,000.

19 We know for certain that the grocery store
20 generates a monthly rent of \$5,400 and we have added
21 that to what we understand is the rent from the market
22 of, approximately, \$2,500. And applying the proper
23 mill rate to the 2006 assessed value for this property
24 and deducting the likely taxes, we come out with a net
25 of \$84,000 of profit. It's plainly evident that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 applicant makes no capital improvements to the
2 building, so she does not have that expense.

3 There is also no mortgage. This building
4 was paid for long ago. It has been owned for a very
5 long time by the family. We assume that that net that
6 we have arrived at of, approximately, \$84,000 is not
7 taxed at the state level because the owner is a
8 resident of Florida, further contributing to the
9 profitability of the property.

10 The law does not allow this applicant to
11 receive relief from Zoning Regulations in order to
12 make a more profitable use of her property. And, in
13 any event, she has not shown that she is unable to
14 operate the property without a profit. By omitting
15 the request for relief under 2003.3, she has attempted
16 to lower her standard of proof to practical
17 difficulties from hardship and that we believe if the
18 proper standard were applied, if she had applied for
19 all of the proper variances, that applying the
20 hardship test would be absolutely fatal to her
21 variance request.

22 I just want to briefly distinguish the
23 case that the applicant relies on, which is the Tyler
24 case, from the case at hand. There the owner's two
25 historic buildings were unusable. The owner had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 purchased the property in anticipation of development
2 and that is not the case here. This building has long
3 been owned by this family and operated profitably.

4 Further, the California Street buildings
5 are not in a state of ruin, which the buildings were
6 in Tyler. They are rented and are producing income
7 which the buildings were not in Tyler. Further, this
8 applicant did not come to this situation unwittingly
9 or even through an improvident purchase.

10 Further, in this case I should make the
11 point that the neighbors have offered to buy this
12 building. We recognize that we're asking to have the
13 variances not granted and we're willing to step up to
14 the plate to try to save this building. Any
15 difficulty that the applicant faces is her own
16 creation and her son's youthful dream, as he
17 testified. The fact that an expansion requiring a
18 variance is personally preferable to other methods not
19 requiring variances does not constitute a unique
20 property situation.

21 I think we're short on time and we're
22 going to move to the third prong, which is the showing
23 that there is no detriment to the public good and
24 we're going to show through witnesses and documentary
25 evidence that the applicant cannot meet that required

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 standard.

2 CHAIRPERSON GRIFFIS: Excellent. Before
3 we go too far into that then, there's an awful lot of
4 legal aspects that you brought out. Let me see if I'm
5 clear on a couple of them. First of all, you have
6 indicated Gilmartin. Gilmartin established the fact
7 that a confluence of factors could be taken into our
8 understanding of their meeting the test.

9 Are you indicating, because I thought you
10 said Gilmartin lays out all these confluences, but
11 each has to be meritorious on their own? Is that what
12 you're saying?

13 MS. BEGGS: I think what we're saying is
14 that there is not a confluence of factors, because the
15 only legitimate factor that actually obtains here is
16 the fact that the building is a nonconforming
17 structure in a Historical District.

18 CHAIRPERSON GRIFFIS: I see.

19 MS. BEGGS: That contributes to the
20 neighborhood and that the other two factors that are
21 laid out are simply red herrings that aren't
22 appropriately considered.

23 CHAIRPERSON GRIFFIS: I see. So it's not
24 refuting that a confluence of factors established in
25 Gilmartin can be utilized, but rather that it's not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 here?

2 MS. BEGGS: Correct, yes.

3 MS. STARR: Yes.

4 CHAIRPERSON GRIFFIS: Although you just
5 stated, too, you said that it's an existing historic,
6 contributing historic structure, right, and that it is
7 nonconforming to lot occupancy. Doesn't Clerics set
8 out the fact that a uniqueness can be set with the
9 existence of a structure, historic or not?

10 MS. STARR: I am not as familiar with
11 Clerics as you probably are and I did note in reading
12 through these cases that when a nonprofit organization
13 was the applicant and seeking a variance, the court
14 seemed to extend a little bit more flexibility as in
15 Monaco, Clerics and 1700 with the YMCA.

16 (Whereupon, at 5:00 p.m. the Public
17 Hearing continued into the evening session.)

18

19

20

21

22

23

24

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 CHAIRPERSON GRIFFIS: Right, and I don't
4 dispute that and I think that's an important aspect to
5 bring up to our attention and recollection of those.

6 Let me ask again, just the one I'm most
7 unfamiliar with is actually the one you have presented
8 today of Lenkin, L-E-N-K-I-N. And isn't Lenkin, in my
9 brief study of it, isn't it talking about a similar
10 project, as you said? It's an office building on a
11 floor and it's residential and proposed addition to
12 the residential. But the office building was looked
13 to be renovated and recreated.

14 I mean, the court says and it states that
15 "No structure devoted to nonconforming use may be
16 enlarged nor may a new structure be erected to house
17 a nonconforming use."

18 That seems to set up an interesting point
19 for us today. But you go up a little bit further and
20 it says when the leased office -- describing the
21 project, when the lease of the office tenant expired
22 in 1978, the petitioner decided to renovate and
23 enlarge the main structure for a combined residential
24 and office use.

25 That is where I see a differentiating

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 factor. I think that that would, in fact, invoke the
2 decision that they did uphold and BZA's decision that
3 you would not be able to, under Chapter 20, enlarge a
4 nonconforming use. But do we have that situation
5 here?

6 MS. STARR: I don't think that the
7 language that you read from makes it clear where the
8 enlargement was, whether it was of the office.

9 CHAIRPERSON GRIFFIS: Well, that's --

10 MS. STARR: And I don't --

11 CHAIRPERSON GRIFFIS: That's what I'm
12 asking you. Where was it then? Where was the
13 enlargement in your understanding in reading that?

14 MS. STARR: My understanding of that case
15 is that the enlargement was the addition of a full
16 third floor on top and some renovation to the second
17 floor that would add residential.

18 CHAIRPERSON GRIFFIS: Then what is the
19 nonconforming use that they were dealing with here?

20 MS. STARR: The office would be retained.
21 The existing office would be retained in that case
22 just as here, the existing store would be retained or
23 whatever.

24 CHAIRPERSON GRIFFIS: So curing your --
25 and I'm just trying to understand this, but curing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 your understanding of relief needed, which is the use
2 variance, in order to cure that you would get rid of
3 the retail in this project and we wouldn't have this
4 discussion?

5 MS. STARR: We understand that that's a
6 possibility. We think it's unlikely. Certainly based
7 on what we're aware of in terms of rents, \$5,400 from
8 the store is a very good rent, particularly compared
9 to the real estate office which is a much larger
10 space. And residential is -- notwithstanding the
11 testimony of Mr. Ney in March, residential is -- and
12 we will show this in our case, residential is not as
13 profitable as commercial rents.

14 CHAIRPERSON GRIFFIS: Okay. I will pose
15 this because it's in my head, because you brought this
16 up, but I don't necessarily want the answer at this
17 point, but how does it compare with residential sale
18 in this market and retail rent? Is that a comparison
19 that we're going to see also? You have indicated --

20 MS. STARR: I'm not sure I understand the
21 question.

22 CHAIRPERSON GRIFFIS: You have indicated
23 that they get good retail rent, so why would they want
24 to diminish that and, opposed to residential rent,
25 they are better off with retail. Is that my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 understanding?

2 MS. STARR: That is what we believe.

3 CHAIRPERSON GRIFFIS: Okay. What about
4 residential sale and retail rent, is that a comparison
5 that you did?

6 MS. STARR: No, we did not. We are taking
7 the applicant at her word that she wants to rent these
8 units not sell them.

9 CHAIRPERSON GRIFFIS: Sure.

10 MS. STARR: And it's certainly our
11 understanding generally that a four unit condo is very
12 difficult to pull off.

13 CHAIRPERSON GRIFFIS: Okay. Okay. Last
14 then, I guess I'm a little perplexed on, because I
15 seem to recall, I know I recall, some submissions
16 about the appropriateness or not appropriateness, I
17 don't know what the terminology is, but it's not bad
18 having a corner market in your neighborhood.

19 So I'm wondering why we're being faced
20 with a presentation of a case that is essentially
21 saying the market has to go to make anything else
22 happen. If I understand your legal reasoning today,
23 the entire use variance is needed because of your
24 understanding that under 2003 and 2000, there is an
25 expansion of a nonconforming use. And I think the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 regulations are very straight on it. We don't need
2 the court cases to tell us. The regulations are
3 written to cure those when the opportunity arises.

4 MS. STARR: One point that I think is
5 important to remember is that as a matter-of-right
6 they cannot -- the applicant cannot build an apartment
7 building. I mean, the variances are necessary. And
8 so I'm not sure what you're asking, whether you're
9 asking are we willing to say, well, we'll give up the
10 market and then you say, okay, they can build.

11 CHAIRPERSON GRIFFIS: No, and I don't mean
12 to pose that. Let me be absolutely clear. I'm not
13 looking for bartering here. I'm looking at
14 understanding your situation. From what I understand,
15 the applicant is coming in as, yes, they need relief
16 because it's a nonconforming structure and they don't
17 meet the conformity of, as Office of Planning laid
18 out, lot occupancy.

19 And Office of Planning also indicated that
20 it's not the height that's at issue here. They could
21 build the height as a matter-of-right. It's not the
22 FAR that is of issue in the revised plan. It's the
23 lot occupancy and the addition to the lot occupancy.
24 And we also have the other aspect of the nonconforming
25 use that's now being dealt with.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So I guess my point is maybe I'm not being
2 clear. But you are pushing to say that there is a use
3 variance here that's required. That seems to be
4 taking the position that this is a use that needs to
5 be removed.

6 MS. STARR: Yes, the use variance is
7 required because they want to make structural
8 alterations to a nonconforming use. Am I missing your
9 question? Let's let Kate take a crack at this.

10 CHAIRPERSON GRIFFIS: No, no.

11 MS. STARR: Maybe she understands your
12 question.

13 MS. BEGGS: As I read section -- I think
14 this is what you're getting at. As I'm reading
15 section 2003, it says that you cannot change or you
16 may change the nonconforming use to a conforming use,
17 but only subject to the provisions of that chapter and
18 one of those provisions is that the change cannot
19 create any deleterious external effects, including,
20 but not limited to, noise, traffic, parking and
21 loading considerations, illumination, vibration,
22 etcetera.

23 Therefore, they could not as of right turn
24 that first floor into apartments. And the second
25 point is it would be kind of inappropriate for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 apartments. Everyone who looks at the plan thinks the
2 one plan first floor apartment is close to hideous.
3 It has one window that has bars on it and it is
4 otherwise completely dark. It's sided by a townhouse
5 on this side.

6 CHAIRPERSON GRIFFIS: Right. I understand
7 that.

8 MS. BEGGS: And it will have one window
9 and then go all the way back and would have a wall on
10 the other side. So it, you know, kind of gives a
11 bowling alley effect. But the structure itself and I
12 know we discussed this with you all, plus the Office
13 of Planning, it was built as a commercial structure
14 and it really does not lend itself well to conversion
15 to a residential use on that first floor.

16 CHAIRPERSON GRIFFIS: Right. Okay. Okay.
17 Other questions?

18 VICE CHAIR MILLER: Yes. About this, did
19 you say that they should be seeking a variance from
20 2001.3 or did I mishear you?

21 CHAIRPERSON GRIFFIS: 2003, 2003.3, I
22 believe, it was.

23 VICE CHAIR MILLER: 2003, okay. That may
24 solve my -- okay. Thank you.

25 UNIDENTIFIED SPEAKER: As the song says,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 turn the page.

2 CHAIRPERSON GRIFFIS: Anything else?

3 VICE CHAIR MILLER: Well, what uses are
4 being changed within the structure? This changing use
5 is within structures, right?

6 MS. STARR: The current use on the street
7 level, which is the only level at this time, is
8 commercial and office. And the commercial would be
9 converted to residential.

10 VICE CHAIR MILLER: Thank you.

11 MS. STARR: And for that matter, the
12 commercial would be moved, we're being told, into what
13 is now office. So there is a change there which we
14 have noted in some of our filings, but have not really
15 focused on here.

16 CHAIRPERSON GRIFFIS: So the way you are
17 reading 2003 is we have an existing nonconforming use
18 in a building. In order to do anything, changing out
19 of that nonconformity, you believe that there is some
20 relief or, yes, that there's some relief, and that the
21 entire 2003 needs to be met?

22 MS. STARR: Yes.

23 CHAIRPERSON GRIFFIS: All of those
24 factors?

25 MS. STARR: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay. Even when you
2 have a nonconforming use in an existing structure that
3 changes its use to the conforming use within the zone
4 district it is located?

5 MS. STARR: Yes. There is no exception
6 noted.

7 MS. BEGGS: No, it specifically talks
8 about changing it to a conforming use permitted as a
9 matter of right. So that's the same thing.

10 CHAIRPERSON GRIFFIS: Okay.

11 VICE CHAIR MILLER: All right.

12 CHAIRPERSON GRIFFIS: Other questions?

13 VICE CHAIR MILLER: Yes, it gets a little
14 bit confusing. If you have a nonconforming use in a
15 building, are you saying a variance cannot be granted
16 for, an area variance cannot be granted, any addition,
17 based on the Lenkin case? Is that what you're saying?

18 MS. BEGGS: Yes, that goes to structural
19 alteration going through.

20 MS. STARR: If a structural alteration is
21 necessary, that is how we are reading that case, yes.

22 VICE CHAIR MILLER: What do you mean if a
23 structural alteration is necessary?

24 MS. STARR: We're reading the case
25 focusing on the language that says that any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 interpretation of the regulations which expands the
2 prerogatives of nonconforming users is undesirable, so
3 that a nonconforming use may be continued only if no
4 structural alteration or enlargement is made. Those
5 are the -- that's language right out of that case and
6 that case affirms the BZA's decision and that is still
7 good law. It has not changed. And as I said, it is
8 noted in numerous national legal treatises, that case.

9 MS. BEGGS: For that proposition.

10 VICE CHAIR MILLER: Thank you.

11 MS. STARR: For that proposition.

12 VICE CHAIR MILLER: Yes.

13 CHAIRPERSON GRIFFIS: Okay. Gosh, this is
14 all so fascinating. 2002, does it inform you at all
15 how you read 2003? 2002 goes into nonconforming uses
16 within structures and it seems to lay out or seems to
17 lay out very restrictive aspects of nonconforming
18 uses. And it says, and it defines itself, look
19 nonconforming uses can't go into any other part of the
20 structure and in order for you to look at the
21 regulations for those nonconforming uses, you are
22 restricted to look at it for those areas of which it
23 now occurs.

24 So would this then impact any of the other
25 areas that are being proposed and/or does that inform

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you on how you read 2003 as it looks to the current
2 nonconforming use area?

3 MS. BEGGS: Well, I think, Mr. Chairman,
4 how I read them to be in harmony with one another?

5 CHAIRPERSON GRIFFIS: Yes.

6 MS. BEGGS: Is that under 2002 it says
7 that if you've got a nonconforming use within a
8 structure, you're not allowed to make a structural
9 alteration, obviously, unless you get a variance from
10 that and that's 2002.4.

11 CHAIRPERSON GRIFFIS: A structural
12 alteration to the area which the nonconforming use
13 occupies.

14 MS. BEGGS: I don't know. It seems to me
15 here I don't know whether we are splitting hairs.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. BEGGS: But it seems to me insertion
18 of 42 foot columns is a major structural alteration to
19 this building.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. BEGGS: Together with the supporting
22 joist beams, etcetera.

23 CHAIRPERSON GRIFFIS: I don't disagree.
24 Now, read 2002 is nonconforming use within structures,
25 right?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BEGGS: Correct.

2 CHAIRPERSON GRIFFIS: And changing uses
3 2003, changing uses within structures. Do you not
4 read in 2003.1 that the uses that they are talking
5 about as being permitted as a matter-of-right in the
6 most restrictive district in which the existing
7 nonconforming use is permitted as a matter-of-right?
8 Isn't that talking about actually changing a
9 nonconforming use to potentially another
10 nonconformity?

11 MS. BEGGS: Correct, but -- no, I don't
12 think it's talking about changing it to another
13 nonconformity. I think it's talking about -- the
14 scenario is that he takes the store and decides he
15 wants to split it up into a bunch of little apartments
16 and then they would be changing a nonconforming use to
17 a conforming use and then he would have to meet the
18 requirements.

19 CHAIRPERSON GRIFFIS: But isn't that the
20 whole point? Isn't that the case that you have just
21 cited to us, this is what the court says? It's that
22 we're trying to cure nonconforming uses. Why would
23 the regulations start saying, you know, even if you
24 want to put it into a matter-of-right use, you still
25 can't do it as a matter-of-right, because you had an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 existing nonconforming use. Isn't 2003 talking about,
2 essentially, lessening the impact of a continuing
3 nonconforming use?

4 MS. BEGGS: Yes and no. I think that, for
5 instance, if you were to put in four little apartments
6 in this building, you would have a lot of deleterious
7 impact on the neighborhood, as you're going to hear
8 testimony on that today, because we live in probably
9 one of the busiest intersections.

10 CHAIRPERSON GRIFFIS: I'm with you when we
11 get down to those, what you'll bring up as specifics.

12 MS. BEGGS: Right.

13 CHAIRPERSON GRIFFIS: But what I'm trying
14 to get, what I'm trying to reconcile is is your
15 definitive case, as you've put it today, and the
16 statements of the court and the statements of the BZA,
17 in fact, the court upheld it that the dealings with
18 the nonconforming uses.

19 MS. BEGGS: So you're back to 2002?

20 CHAIRPERSON GRIFFIS: Yes.

21 MS. BEGGS: You're at 2002.4?

22 CHAIRPERSON GRIFFIS: In 2003. Yes, I
23 mean, the court says again. I mean, it says it over
24 and over again it seems in the citing that it
25 prohibits the enlargement of a structure that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 devoted to nonconforming uses, even where there is a
2 proportion -- oh, I didn't see that part. That's an
3 interesting one. Well, let's qualify that. That's
4 not a portion that you highlighted actually and I
5 think it's an interesting portion.

6 We have to look at it and that is -- what
7 page was that? It's 358. At the top, the bottom of
8 the first paragraph.

9 MS. BEGGS: Do you have it?

10 CHAIRPERSON GRIFFIS: That the building is
11 for purpose of enlarging a portion of the building in
12 conforming use has no applicability, because he argues
13 that the section bars only enlargements of
14 nonconforming use. See where we're going here. Okay.

15 MS. BEGGS: I'm sorry, Mr. Chairman, which
16 page are you referring to?

17 CHAIRPERSON GRIFFIS: I dropped off there,
18 didn't I?

19 MS. BEGGS: Yes.

20 CHAIRPERSON GRIFFIS: 358 at the top on
21 the left side in the first paragraph. I'm sorry, and
22 I wanted to -- it's qualifying a section 7107.1, which
23 obviously doesn't exist in our regulations, at this
24 point, as they have been renumbered in different
25 iterations. However, at the end of each of our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 section of our regulations, it will say the source.
2 And, in fact, 7101.1 is general provisions of 2000.
3 It's the beginning of Chapter 20.

4 MS. BEGGS: Yes, I see what you're saying.
5 We worry miss -- not to point that language to the
6 court, because it certainly says --

7 CHAIRPERSON GRIFFIS: Well, you weren't
8 there to point to this.

9 MS. BEGGS: This, by the way, is the
10 proposition in all of the Horn books that this case is
11 cited for is the proposition that you're not allowed
12 to enlarge a structure having a -- devoted to a
13 nonconforming use, even when the proposed enlargement
14 is intended for a conforming use. That's in numerous
15 treatises. That's what it's called out for.

16 CHAIRPERSON GRIFFIS: Okay.

17 VICE CHAIR MILLER: Okay. I have another
18 question though. This cites an earlier regulation.
19 Do you know if that earlier regulation was different
20 from the current regulations dealing with
21 nonconforming uses in structures?

22 MS. STARR: The case actually -- the court
23 actually tells us on the first page, on page 356 in
24 the second column at the bottom, that section 7107.1,
25 which is what this case is dealing with, prohibits the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 enlargement of a structure devoted to a nonconforming
2 use and then deals with 7107.21, which they allow --
3 I think that's the one where they said that it's okay
4 to have -- apply an area variance standard to that
5 one.

6 VICE CHAIR MILLER: I understand that. My
7 question is though they were interpreting the Zoning
8 Regulations that existed then that dealt with this
9 issue and it's the same issue. However, I'm wondering
10 if the regulations are the same, because if, perhaps,
11 the Zoning Commission may have promulgated
12 differentiations that we're looking at now that might
13 lead us to a different conclusion.

14 CHAIRPERSON GRIFFIS: It's right here.
15 The source of 7107.1 is 2005.1, which is
16 discontinuance.

17 VICE CHAIR MILLER: Okay.

18 CHAIRPERSON GRIFFIS: Which goes to the
19 first factor of this court case. We'll probably need
20 to not do this up here, because it's going to take us
21 some time, which starts with the beginning of the
22 lease lapsed in '78. Discontinuance for any reason
23 for a nonconforming use of the structure/land, except
24 for a Governmental action, it basically says in three
25 years if it doesn't invoke again with occupancy or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 use, that it will go away. Any nonconforming use
2 shall conform to the regulations.

3 All in one little paragraph back and
4 forth. It's fascinating. Okay. We're going to have
5 to dig into that a little bit more. Okay.

6 MS. BEGGS: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes?

8 MS. BEGGS: I don't want to belabor this
9 discussion. I wonder if what you prefer is to leave
10 the record open and we could delve into it more deeply
11 and give you a subsequent --

12 CHAIRPERSON GRIFFIS: Absolutely.

13 MS. BEGGS: -- supplemental briefing on
14 it?

15 CHAIRPERSON GRIFFIS: Well, right. And
16 we're going to have the applicant also rebut it if
17 they so choose, but yes, I think we'll outline a
18 little bit more as we need it. Okay. Excellent. Any
19 other questions? Good. Let's continue on. I did
20 want to get on top of that, unless we want to do --
21 let's do cross of this now, if you are prepared or --
22 okay. Good. There it is then. Let's continue on.

23 MS. BEGGS: Okay. Eleanore Wotherspoon.

24 CHAIRPERSON GRIFFIS: Indeed.

25 MS. WOTHERSPOON: Good afternoon. My name

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is Ellie Wotherspoon and I live at 2153 California
2 Street, N.W., Apartment 403, and I am speaking as a
3 witness on behalf of one of the interested parties,
4 which is California Court California House and
5 thankfully my role is quite limited and all I will be
6 doing today is submitting six photographs that I took
7 and I have copies for everybody.

8 But the first two are the ones you've been
9 looking at for the last hour. On the left -- and the
10 intention of these is really to give you a better
11 sense of the site.

12 CHAIRPERSON GRIFFIS: Sure.

13 MS. WOTHERSPOON: And also to help
14 illustrate points that others will be making today.

15 CHAIRPERSON GRIFFIS: Sure.

16 MS. WOTHERSPOON: During their
17 presentation.

18 CHAIRPERSON GRIFFIS: Can you help us
19 acclimate? First of all, are you going to tell us if
20 you're a photographer and all that stuff, if need be?
21 But tell us the time that this is, the season.

22 MS. WOTHERSPOON: Yes.

23 CHAIRPERSON GRIFFIS: When it was done and
24 then help me get some directional orientation on this.
25 Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. WOTHERSPOON: Perfect. I will do
2 that. On your left, that is a picture that I took on
3 July 2, 2005 at 7:29 p.m. and it is the view from my
4 apartment window, Apartment 403, across California
5 Street looking over the market to the north/northwest
6 wall of the Woodrow Apartments that will be directly
7 affected, as you will hear by the -- by any addition
8 above the market.

9 CHAIRPERSON GRIFFIS: So we're looking
10 north?

11 MS. WOTHERSPOON: You're looking --

12 CHAIRPERSON GRIFFIS: We're looking south?

13 MS. WOTHERSPOON: That wall is facing
14 north/northwest, which has the light on it.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. WOTHERSPOON: We're looking south/
17 southeast.

18 CHAIRPERSON GRIFFIS: I see. Okay.

19 VICE CHAIR MILLER: What are the buildings
20 we're looking at?

21 MS. WOTHERSPOON: On the left you see the
22 market, which is what the applicant is applying for
23 the addition on top of. Over that to the Woodrow
24 Apartments with the light cast on them directly.

25 CHAIRPERSON GRIFFIS: The market is here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. WOTHERSPOON: The street coming up
2 running, essentially, south/southeast is Phelps Place
3 and on the right is the church you will be hearing
4 several of us refer to, it's Our Lady, Queen of the
5 Americas, and that's the church that has all of the
6 activities people will be telling you about. That is
7 at the corner of Phelps Place and California Street,
8 which is running east/west, but is not visible in that
9 photograph.

10 The second photograph will help maybe get
11 -- sort of orient you better. That I took on March
12 2nd of this year, 2006, at 6:15 p.m. and it's what I
13 call the church panorama. As you walk west from
14 Connecticut Avenue along California Street, starting
15 as early as a building called Le Bourge and working
16 your way west on the north side of California Street,
17 you can see the entire east facade of the church over
18 the one-story market.

19 And we just included that because it's a
20 beautiful streetscape that we all would be sorry to
21 lose and you can get a sense of the openness of that
22 intersection. You may also start to get a sense of
23 the congestion and the parking situation, which I will
24 show in some other photographs.

25 The third picture, and I apologize, I do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not have a poster of any of the others, but the third
2 picture I took on March 4th of this year at 11:30 a.m.

3 CHAIRPERSON GRIFFIS: Good. Why don't we
4 have those put into the record, so that we can look at
5 them at the same time you do? Let's make sure the
6 applicant gets a set, ANC, if they are here.

7 MS. WOTHERSPOON: That -- this photograph
8 is taken from my apartment window, again the fourth
9 floor of California Court across the street. I'm
10 looking at the market.

11 CHAIRPERSON GRIFFIS: Gotcha. Looking
12 down on it.

13 MS. WOTHERSPOON: Again, it's 11:30 in the
14 morning.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. WOTHERSPOON: And you can see the
17 shadow cast by the market.

18 CHAIRPERSON GRIFFIS: Sure.

19 MS. WOTHERSPOON: You will see it when you
20 look at these closely. And then the whole
21 intersection is bathed in light and actually the light
22 carries directly into my apartment. And we're just
23 simply showing that that will be -- that light will
24 become shadow if there is an addition on the building.

25 CHAIRPERSON GRIFFIS: And this building

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 here on that large photograph, how do you call the
2 tall building?

3 MS. WOTHERSPOON: The church?

4 CHAIRPERSON GRIFFIS: No, the other one.

5 MS. WOTHERSPOON: The Woodrow.

6 CHAIRPERSON GRIFFIS: The Woodrow. Can
7 you pick up the last photograph that you just had?
8 The Woodrow. Is there sun on the Woodrow at 11:00?

9 MS. WOTHERSPOON: No.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. WOTHERSPOON: Because the sun --
12 because that is facing, let's see, north/northwest,
13 the sun is, essentially, behind that building.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. WOTHERSPOON: At that point.

16 CHAIRPERSON GRIFFIS: You're showing us
17 this photograph to show how sun drenched the street
18 and sidewalk is, although not the sidewalk?

19 MS. WOTHERSPOON: And my window, but I
20 won't dwell on that.

21 CHAIRPERSON GRIFFIS: And what's your
22 assertion that would be impacted with an addition of
23 two stories on that building in that photograph?

24 MS. WOTHERSPOON: It's simply to
25 illustrate that the light will be -- it's a light

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 intersection and that that will be cast in shadow
2 after any addition is made.

3 CHAIRPERSON GRIFFIS: The intersection
4 will be?

5 MS. WOTHERSPOON: Yes.

6 CHAIRPERSON GRIFFIS: The street and
7 sidewalk. Okay. Good. But just continue on holding
8 that up, if you don't mind. The adjacent building now
9 on the other side, is that townhouse and then there is
10 another apartment?

11 MS. WOTHERSPOON: Those are already in
12 dark.

13 CHAIRPERSON GRIFFIS: I see.

14 MS. WOTHERSPOON: Caused perhaps by a
15 building called The Envoy that is nine stories.

16 CHAIRPERSON GRIFFIS: Right. No, I see it
17 here.

18 MS. WOTHERSPOON: It's a modern --

19 CHAIRPERSON GRIFFIS: Okay. And then the
20 last question for clarity on that, is there a shadow
21 on the roof of the market?

22 MS. WOTHERSPOON: There is some shadow,
23 but not -- you'll see it clearly marked. I would say
24 it's roughly 50/50.

25 CHAIRPERSON GRIFFIS: Okay. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. WOTHERSPOON: Because by 11:30 in the
2 morning, I guess, the sun is --

3 CHAIRPERSON GRIFFIS: Pretty high.

4 MS. WOTHERSPOON: -- pretty high.

5 CHAIRPERSON GRIFFIS: Okay. Excellent.

6 MS. WOTHERSPOON: Now, the next two
7 pictures are, essentially, a pair, because we couldn't
8 decide between the two and they, essentially,
9 illustrate the same thing.

10 CHAIRPERSON GRIFFIS: And good color
11 composition, too. Okay. Which building is that?

12 MS. WOTHERSPOON: This is California Court
13 and California House, which is an interested party.
14 And I simply took these pictures to show -- well, let
15 me give you the dates. No. 4, which you will be
16 getting, was taken on March 4th at 8:44 a.m. No. 5
17 was taken a day earlier, March 3, 2006, at 10:16 a.m.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. WOTHERSPOON: And we simply wanted to
20 show a sunny morning with California Court and
21 California House. We do not claim to know exactly how
22 the shadows of an addition on the building would
23 affect the shadows on our building, but residents of
24 the Woodrow will be talking about this as the view
25 they will lose.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And last, No. 6, taken on March 4, 2006 at
2 10:54 a.m., I just went outside on a Saturday morning.
3 There were no church services going on. There was no
4 day school -- day care center in operation. There was
5 a health clinic at the church, a free health clinic
6 for several hours. But anyway, six cars right in
7 front of me are illegally parked and that's just
8 routine. And this is a quiet morning. That's really
9 all I have.

10 CHAIRPERSON GRIFFIS: Is that Metro access
11 van backing into the street?

12 MS. WOTHERSPOON: Yes, and he ended up
13 leaving a woman.

14 CHAIRPERSON GRIFFIS: Wait. I think I can
15 get the license. We can call him.

16 MS. WOTHERSPOON: I ended up --

17 CHAIRPERSON GRIFFIS: I'm still --

18 MS. WOTHERSPOON: I ended up helping the
19 woman. The poor woman was left by the Metro truck.

20 CHAIRPERSON GRIFFIS: And it's no humor
21 and I absolutely agree with the parking. I mean,
22 actually, it's fascinating that picture, because the
23 cars seem to be almost encroaching on the accessible
24 corner, which is an interesting dynamic.

25 MS. WOTHERSPOON: That's routine.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: And also illegal,
2 whether we approve this or not. But I'm still stuck
3 on this shadow stuff, because that's what most of your
4 photographs were really showing us. Is that right?
5 I look at your last photograph and what time was that
6 again?

7 MS. WOTHERSPOON: The very last one?

8 CHAIRPERSON GRIFFIS: Yes.

9 MS. STARR: They may be out of order.

10 MS. WOTHERSPOON: I know. Hang on.

11 CHAIRPERSON GRIFFIS: That's all right.
12 I think I'm with her. That's fine.

13 MS. WOTHERSPOON: No, I have --

14 CHAIRPERSON GRIFFIS: The Metro access.

15 MS. WOTHERSPOON: I have it.

16 CHAIRPERSON GRIFFIS: What time was that?

17 MS. WOTHERSPOON: March 4th at 10:54 a.m.

18 CHAIRPERSON GRIFFIS: So at 10:54, what's
19 the sun condition on the applicant's site?

20 MS. WOTHERSPOON: I cannot see the roof,
21 but at that point on the --

22 CHAIRPERSON GRIFFIS: Is the market in
23 sun?

24 MS. WOTHERSPOON: Not the facade on Phelps
25 Place.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: How is the apartment
2 building in back?

3 MS. WOTHERSPOON: I do not see any sun
4 cast on there. The sun, as I mentioned earlier, cuts
5 across the southern sky.

6 CHAIRPERSON GRIFFIS: Sure.

7 MS. WOTHERSPOON: And it's really in the
8 afternoon that it shines from the west up California
9 Street onto the Woodrow in varying degrees throughout
10 the year.

11 CHAIRPERSON GRIFFIS: Right. Good. Okay.
12 Thank you.

13 MS. WOTHERSPOON: Thank you.

14 CHAIRPERSON GRIFFIS: Anything else?
15 Actually, one other thing. Do we get the legend with
16 these or no? Does that cost extra? I think that
17 might be helpful of your testimony, but I'll leave it
18 up to you.

19 MS. WOTHERSPOON: I'll write a -- may I
20 write a neater version?

21 CHAIRPERSON GRIFFIS: Sure. Do we have
22 cross on this one?

23 MS. WOTHERSPOON: I can just give it to
24 you.

25 CHAIRPERSON GRIFFIS: Good. Let's see,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we're going to call witnesses and have questions and
2 cross, so if you wouldn't mind just having a seat
3 again, there's going to be a couple more questions for
4 you. But I'll be direct, let's put that into the
5 record. We've gone through it. You don't have any
6 labels on any of these photographs and it's been a
7 long day already and when we look at this again, we
8 ought to be able to refresh time, date, etcetera.

9 MS. WOTHERSPOON: I would be happy to
10 label the photographs.

11 CHAIRPERSON GRIFFIS: No. It's going to
12 be faster now, because we've got the photographs. Put
13 your legend in and then -- actually, let's just do
14 this now, just so we know what we are doing.

15 MS. BEGGS: Thank you. That was the only
16 cross I was going to have.

17 CHAIRPERSON GRIFFIS: You want us to
18 number them? Excellent. I'm getting slower in the
19 evening hours. I'm going to ask you to follow along
20 with me. This is going to be photograph 1.

21 MS. WOTHERSPOON: Correct.

22 CHAIRPERSON GRIFFIS: Thank you. 2 is the
23 market.

24 MS. WOTHERSPOON: Correct.

25 CHAIRPERSON GRIFFIS: Okay. 3 is from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 your apartment and the roof of the market.

2 MS. WOTHERSPOON: Yes.

3 CHAIRPERSON GRIFFIS: Excellent. 4 will
4 be the California House first.

5 MS. WOTHERSPOON: That's actually No. 5 on
6 my list, but they are, essentially, the same.

7 CHAIRPERSON GRIFFIS: You want the closer
8 up one to be 4?

9 MS. WOTHERSPOON: Well, I call it the
10 white van is No. 5.

11 CHAIRPERSON GRIFFIS: White van No. 5.
12 Okay. So the next one is No. 4?

13 MS. WOTHERSPOON: Correct.

14 CHAIRPERSON GRIFFIS: We'll call that the
15 silver car. And then the last one is 6, Metro access.
16 Okay. Excellent.

17 MS. BROWN: If I could just get the date
18 for the picture No. 3?

19 CHAIRPERSON GRIFFIS: Picture No. 3, date?

20 MS. WOTHERSPOON: March 4, 2006, 11:33
21 a.m.

22 MS. BROWN: Thank you.

23 CHAIRPERSON GRIFFIS: Okay. Perfect.
24 Okay. Thank you.

25 MS. BEGGS: We would like to next present

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the testimony of Sherry Spurlock, who we were offering
2 as an expert in the sale of condominiums and
3 cooperative apartments in the City of Washington,
4 primarily in the northwest quadron of the city.
5 Would you state your name and where you are employed?

6 MS. SPURLOCK: Yes, my name is Sherry
7 Spurlock and I work with the Long and Foster Brokerage
8 out at 4400 Jennifer Street, N.W., Washington, D.C.
9 I've been there since that office opened six years
10 ago. I have been with Long and Foster, I guess, since
11 it has been Long and Foster. I got my real estate
12 license in 1968.

13 CHAIRPERSON GRIFFIS: Excellent. And any
14 other questions? We haven't established you as an
15 expert witness yet, have we? You're proffering as an
16 expert. Is that right?

17 MS. BEGGS: No, I'm proffering her as an
18 expert. I don't know whether the applicant wants to
19 conduct a voir dire or whether this is sufficient that
20 she has been doing this since 1968. She has been
21 selling real estate. I could ask a few more
22 questions, if you would like?

23 CHAIRPERSON GRIFFIS: I don't need you to
24 ask questions. However, does the Board have
25 questions? If not --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR MILLER: Well, what exactly is
2 she being proffered as an expert in?

3 MS. BEGGS: The input -- the impact that
4 this project would have on the value of the properties
5 in the Woodrow, if it goes forward.

6 CHAIRPERSON GRIFFIS: Oh, that's not what
7 I heard you first say.

8 VICE CHAIR MILLER: Yes. No, what I mean
9 is, you know, is she an expert in real estate, expert
10 in residential real estate, expert in residential?

11 MS. BEGGS: We can break it down. Ms.
12 Spurlock, we -- let me ask her.

13 VICE CHAIR MILLER: Okay.

14 MS. BEGGS: Would you describe what your
15 practices primarily consist of?

16 MS. SPURLOCK: Right. I have sold
17 condominiums and co-ops in northwest D.C. almost
18 exclusively for about the last 10 to 12 years. I do
19 have numerous awards from my company and I am a top
20 salesperson with Long and Foster.

21 CHAIRPERSON GRIFFIS: Excellent. So your
22 testimony is going to be based on, your expert
23 testimony, your experience with listing and sale?

24 MS. SPURLOCK: Right.

25 CHAIRPERSON GRIFFIS: Prices and closings

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on residential properties. Is that correct?

2 MS. SPURLOCK: How certain things impact
3 when I take someone into a property and they observe
4 certain things. If they observe a wall, they react
5 sometimes certain ways. If they observe that it's
6 dark, they are going to react a certain way.

7 CHAIRPERSON GRIFFIS: Indeed.

8 MS. SPURLOCK: So that was basically what
9 I was going to talk about.

10 CHAIRPERSON GRIFFIS: Okay. Is that
11 different than appraising properties?

12 MS. SPURLOCK: Yes, I am not an appraiser.

13 CHAIRPERSON GRIFFIS: Okay. Any other
14 questions? Does the applicant have any questions?
15 Very well. I think we can move ahead and establish
16 Ms. Spurlock as an expert witness in real estate
17 sales.

18 MS. BROWN: I'm sorry. I do have a very
19 quick question.

20 CHAIRPERSON GRIFFIS: Yes?

21 MS. BROWN: I apologize. Have you ever
22 sold --

23 COURT REPORTER: State your name, please.

24 MS. BROWN: Carolyn Brown from Holland and
25 Knight on behalf of the applicant. Have you sold

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 condos or co-ops in the Woodrow building?

2 MS. SPURLOCK: No, I have not.

3 MS. BROWN: Have you sold condos anywhere
4 on California Street?

5 MS. SPURLOCK: I have listed and sold
6 properties on California Street.

7 MS. BROWN: How long ago?

8 MS. SPURLOCK: I have not sold -- oh,
9 within the last couple of years.

10 MS. BROWN: Okay. In this block?

11 MS. SPURLOCK: No, no, not directly in
12 this block.

13 MS. BROWN: Thank you.

14 CHAIRPERSON GRIFFIS: Very well. I think
15 we can establish Ms. Spurlock in the limited scope is
16 what I'm understanding is the expert testimony would
17 cover and that's the listing, sales and, as you said,
18 the reaction of potential purchasers to elements in
19 the unit. I think that's perfectly appropriate.
20 Let's move ahead.

21 MS. BEGGS: Okay. Ms. Spurlock, at our
22 request, did you preview the apartments at the
23 Woodrow?

24 MS. SPURLOCK: I did. I previewed them on
25 April 17th, yesterday. I deliberately waited until

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 later in the afternoon after it stopped raining, so I
2 could see what the light effect would be.

3 MS. BEGGS: Did you form opinion as to the
4 average value of the apartments, based on your
5 research and your preview of the apartments?

6 MS. SPURLOCK: Yes, I did.

7 MS. BEGGS: What is that opinion?

8 MS. SPURLOCK: I think the average value
9 of the apartments would be somewhere around \$500,000.

10 MS. BEGGS: And did you have an
11 opportunity to review the plans that are proposed for
12 the building on top of the adjacent little store?

13 MS. SPURLOCK: Yes, I did.

14 MS. BEGGS: And did you form an opinion as
15 to the effect that that project, if it went forward,
16 would have on the value of the apartments at the
17 Woodrow?

18 MS. SPURLOCK: Yes, I did. I do believe
19 that having so many, it works out to about two-thirds
20 of the building is going to be impacted by a brick
21 wall or patios or different structures that would be
22 there. The top floor is going to be affected by
23 patios. It is going to be affected by a roof line
24 and, of course, every apartment building always has
25 its -- whatever goes up on the roof, the blocks and so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 forth for the stairway. It would have the AC
2 compressors up there.

3 So the top floor of the Woodrow would have
4 a noise level from air conditioning units and that
5 sort of thing, which I will also mention while I'm on
6 that, the Woodrow is not an air conditioned building.
7 And so by blocking a lot of the air flow that these
8 people -- even yesterday they had their windows open,
9 most of them are probably going to have to put in
10 window air conditioning units, because it is going to
11 affect the air flow into this building, in my opinion.

12 MS. BEGGS: Did you form an opinion as to
13 how great a diminution in value might be visited upon
14 that -- the residents of that building by this
15 project?

16 MS. SPURLOCK: Well, I think probably each
17 apartment they are going to be affected, I think,
18 differently on different levels, but I think an
19 average would be around 15 percent per apartment.

20 MS. BEGGS: Did you -- was any part of
21 your opinion informed by the changes that will take
22 place in that alleyway when it changes from a
23 commercial alleyway trash to a residential alleyway?

24 MS. SPURLOCK: Yes, the alleyway that
25 you're looking at, when you look at this picture, that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is the apartments that are going to be affected. They
2 are going to lose all that afternoon light. They are
3 going to lose that air flow. And right at the base of
4 that, right now there are -- the trash cans from the
5 commercial building are already there and that is also
6 going to be the -- from the drawings and architecture
7 things that I have seen, that is going to be the
8 alleyway that will be used for all the trash from the
9 apartment building.

10 So that is going to be a noise level when
11 trash cans are removed from there and it's also going
12 to be another reason that the people will not be
13 keeping their windows open probably. It could make
14 somewhat of a difference anyway.

15 MS. BEGGS: And did you have an opinion on
16 what the effect of having two tiers of rooftop
17 terraces would have on the clients that you might be
18 taking around to such a building?

19 MS. SPURLOCK: Well, I -- you know,
20 depending on what people do with their rooftop
21 terraces, sometimes people decorate them and they are
22 lovely and some people, you know, put a lot of junk
23 out there on them and they are not lovely. Some
24 people entertain. There could be music noise levels
25 and different things. The windows that are on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 side of the building, it's bedrooms from these
2 apartments and kitchen windows, and so they are going
3 to be very definitely affected by having terraces
4 like, I don't know, 10 or 15 feet from their bedroom
5 and their kitchen windows.

6 MS. BEGGS: And did you form an opinion as
7 to the possible affect of -- on the five units that
8 are not positioned facing the store?

9 MS. SPURLOCK: Yes, I feel that the
10 additional units that are on the other side, they are
11 going to be affected simply because when the value
12 goes down on the ones that are affected, the appraised
13 value will be going down on the building and then they
14 are going to be affected, because they are going to
15 say I have the same square footage. However, it is
16 going to be affected in an appraiser coming in and
17 saying that's the square footage, that's what it is.

18 MS. BEGGS: So in other words, the
19 appraisers will be influenced by the comparables
20 regardless of which side of the building they are
21 situated on?

22 MS. SPURLOCK: Exactly. That's exactly
23 what they will be looking at. Appraisers can,
24 obviously, go out into an area and go around and the
25 Kalorama property values are very high for some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 neighborhoods. However, naturally, they are going to
2 go within the building. And so it will impact the
3 entire building.

4 MS. BEGGS: Thank you. Nothing further.

5 MS. SPURLOCK: Okay.

6 CHAIRPERSON GRIFFIS: Any questions?

7 VICE CHAIR MILLER: Um-hum. Your opinion
8 that the value will go down 15 percent, is that based
9 on how people would perceive the apartments, because
10 of the change in the light and/or is it based on the
11 appraisal going down?

12 MS. SPURLOCK: No, I based it more on the
13 emotion when I show a property, people buy by emotion
14 first. And when they go into a property and it's
15 quite dark or there is a brick wall, they are
16 affected. And my feeling is if I take them in and
17 they know there is going to be a brick wall, that's
18 one thing. But sometimes seeing it is quite emotional
19 and they will say well, if it's X amount of dollars
20 less, I could live with the brick wall, but for this
21 price, I'm going to go to one of the newer units that
22 doesn't have a brick wall.

23 VICE CHAIR MILLER: And based on your
24 experience in selling in the real estate market, have
25 you come upon a similar situation where an abutting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 property, you know, was built to a higher level
2 blocking some of the light and, in fact, the
3 neighboring properties values went down?

4 MS. SPURLOCK: Well, very definitely one
5 of the buildings that just comes to my mind that I --
6 it's a co-op also, it's 1 Scott Circle, and the hotel
7 that was built next door to that building, I mean,
8 that's one of the old, old buildings in the city and
9 a hotel went up next door to it and the wall is solid
10 brick. And so when you walk into those apartments, it
11 -- you know, I have had many people just turn and walk
12 out. They cannot deal with just looking at a brick
13 wall. So I think that's a really good example of a
14 place that was there and all the windows were there
15 and then the brick wall went up.

16 VICE CHAIR MILLER: And is it a similar
17 distance between the buildings?

18 MS. SPURLOCK: Yes, it is.

19 VICE CHAIR MILLER: Okay.

20 MS. SPURLOCK: Yes, it's probably
21 somewhere around 10 feet. Now, there aren't any
22 terraces. This is all solid.

23 VICE CHAIR MILLER: Oh, we were just
24 saying did you say, in effect, that there was a price
25 difference after the building went up?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. SPURLOCK: Oh, yes.

2 VICE CHAIR MILLER: And was it 15 percent
3 or how do you get that 15 percent?

4 MS. SPURLOCK: You know, that I don't
5 really -- I can't really say with the Scott, because
6 at the time that building went up, I don't know what
7 the prices, you know, really were. That hotel, I
8 really don't know what year it went up. And I don't
9 know if it was 15 percent.

10 CHAIRPERSON GRIFFIS: What year about was
11 it built?

12 MS. SPURLOCK: My guess would be that that
13 building probably went back -- up somewhere in the
14 '80s, 1980s. And that really is more of a guess.

15 CHAIRPERSON GRIFFIS: So if I understood
16 your analogy, what you were saying was once that hotel
17 went up, that there was a loss in value of 15 percent.
18 So the day that that went up, is it selling for less
19 than 15 percent of what it was in the '80s today?

20 MS. SPURLOCK: Well, I do know that when
21 I sell anything in the Scott, in the section that is
22 abutted up to that wall, the prices have to be lower,
23 because you can't even get someone to walk in there,
24 unless the price is really low.

25 CHAIRPERSON GRIFFIS: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR MILLER: I was just wondering
2 if you can articulate any more how you arrive at 15
3 percent or is it just something you know from your
4 experience?

5 MS. SPURLOCK: I think it's probably more
6 experience. I gave a range of 12 to 18 percent and so
7 we just rounded it down to a 15 percent. I think the
8 upper floors, I think, will be affected less, other
9 than they will have a noise level. I think the second
10 and the third floor, they are going to be in the dark.
11 There just isn't going to be -- you know, when I stand
12 at the window and look up, on the third floor you can
13 see the sky.

14 On the second floor they are in the dark.
15 So it is really going to put an impact on those units,
16 I think, the second and third floor. The fifth floor,
17 I think, will get the less impact. The fourth floor
18 is going to get impact, but not as much, because you
19 can still see up over the structure.

20 CHAIRPERSON GRIFFIS: You're talking about
21 the Woodrow now, right?

22 MS. SPURLOCK: Yes. I'm talking about --

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. SPURLOCK: You're looking right at the
25 side of the building, the second, third, fourth and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fifth floors.

2 CHAIRPERSON GRIFFIS: Is that the only
3 fenestration on those units?

4 MS. SPURLOCK: Oh, yes.

5 CHAIRPERSON GRIFFIS: Out the side?

6 MS. SPURLOCK: Right.

7 CHAIRPERSON GRIFFIS: And those are one-
8 bedroom units that you went into?

9 MS. SPURLOCK: One and two-bedroom units
10 and most of those windows there are bedroom windows.

11 CHAIRPERSON GRIFFIS: What does \$500,000
12 buy?

13 MS. SPURLOCK: And kitchen windows.

14 CHAIRPERSON GRIFFIS: A one-bedroom? I'm
15 just trying to --

16 MS. SPURLOCK: Yes.

17 CHAIRPERSON GRIFFIS: You said a unit
18 would be \$500,000.

19 MS. SPURLOCK: Yes.

20 CHAIRPERSON GRIFFIS: And you're talking
21 about the one-bedroom.

22 MS. SPURLOCK: That's the average between
23 the one and the two-bedroom.

24 CHAIRPERSON GRIFFIS: Okay. Good.

25 MS. SPURLOCK: The last --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: It's an average.

2 MS. SPURLOCK: -- unit in there sold at
3 \$550.

4 CHAIRPERSON GRIFFIS: Okay. Well, let me
5 be clear. We're looking at three windows there and
6 you're saying that starts with, I guess, the second,
7 third floor.

8 MS. SPURLOCK: Um-hum.

9 CHAIRPERSON GRIFFIS: Right?

10 MS. SPURLOCK: The top floor --

11 CHAIRPERSON GRIFFIS: One, two, three
12 windows.

13 MS. SPURLOCK: -- is the fifth floor.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. SPURLOCK: It will be impacted, but
16 the least.

17 CHAIRPERSON GRIFFIS: Right. So you have
18 two, three, four showing.

19 MS. SPURLOCK: And it starts with the four
20 -- right.

21 CHAIRPERSON GRIFFIS: This is less impact.

22 MS. SPURLOCK: And the second and third
23 floors are going to be left pretty much in the dark
24 looking at a wall.

25 CHAIRPERSON GRIFFIS: Okay. But those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 three windows are the only windows in those units?

2 MS. SPURLOCK: In the front units there
3 are front windows and the one -- the units -- see they
4 are divided up front and back. So the units in the
5 front of the building, I don't know if there is a
6 picture that shows the front of the building or not,
7 but they have rather large windows. So, as I said,
8 they are going to get light through that. But the
9 back units on there, they are going to be pretty much
10 left in the dark.

11 CHAIRPERSON GRIFFIS: Okay. So if I
12 understand you correctly, those units that we're
13 looking at that front Phelps have windows fronting on
14 Phelps Place, right?

15 MS. SPURLOCK: I don't -- I'm sorry, I
16 didn't hear what you said.

17 CHAIRPERSON GRIFFIS: And then in the
18 rear. Oh, I probably shouldn't do that.

19 MS. SPURLOCK: I'm sorry. Right. Yes,
20 that's the front towards the street there. They have
21 large windows and then that side window is their
22 kitchen in most of them. Some of them have turned it
23 into something else. But most of them it's their
24 kitchen window.

25 CHAIRPERSON GRIFFIS: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. SPURLOCK: Then you go back into the
2 bathroom window and that -- no, no. Back, the second
3 window in is the bathroom tier. No. There, that's
4 the bathroom tier. And then you start the other
5 apartments.

6 CHAIRPERSON GRIFFIS: Okay. It's a top
7 heavy T-building with a double loaded corridor.

8 MS. SPURLOCK: Well, yes, the corridor
9 goes up through the center of it, yes, and then you
10 have apartments down on this side and then over. I
11 didn't actually go into the apartments on the other
12 side.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. SPURLOCK: Because that wasn't where
15 the building was.

16 CHAIRPERSON GRIFFIS: How many units are
17 there on a floor?

18 MS. SPURLOCK: Three units on a floor, so
19 there's two on this side of the building and one on
20 the other side.

21 CHAIRPERSON GRIFFIS: Okay. Excellent.

22 MS. SPURLOCK: There is 15 units in the
23 entire building.

24 CHAIRPERSON GRIFFIS: Gotcha.

25 MS. BEGGS: Can I just let the record

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 reflect that this side of the building refers to the
2 side that faces the --

3 MS. SPURLOCK: Yes.

4 MS. BEGGS: -- project and the other side
5 looks out the other direction.

6 MS. SPURLOCK: Right. I'm not being
7 specific. I'm sorry.

8 MS. BEGGS: That's all right.

9 CHAIRPERSON GRIFFIS: Okay. Any other
10 questions?

11 VICE CHAIR MILLER: So the part of the
12 building that faces the back, does that have any
13 windows, other than what's on the side that would be
14 blocked?

15 MS. SPURLOCK: Yes, it -- really, the
16 picture doesn't take you all the way to the back of
17 the building. But the back, those bedrooms are --
18 there's a townhouse back there that's already blocking
19 some of that. So you're just going to get more and
20 there's going to be less light going and filtering
21 back to that back part of those units. I'm probably
22 not describing it very well, but at least you have a
23 photo to look at and if you put the architectural
24 drawings up there, you will see what it blocks off.

25 Oh, I didn't see that. Yes, that shows

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the front. Okay.

2 VICE CHAIR MILLER: Did you go into those
3 apartments that are in the back?

4 MS. SPURLOCK: Yes.

5 VICE CHAIR MILLER: You did?

6 MS. SPURLOCK: Yes, I did.

7 VICE CHAIR MILLER: Okay.

8 MS. SPURLOCK: I did not go into the units
9 that are on the opposite side of the building. This
10 here, they just pointed out to me does show the
11 windows on the front of the building, this picture
12 down here on this side. It shows that there are
13 rather large windows there on those front apartments.
14 Yes, so see the apartments in the front still have
15 those windows. The apartments in the back they lose
16 a lot.

17 VICE CHAIR MILLER: So it's your point
18 about the apartments in the back that even though they
19 may have windows that they have this townhouse across
20 from it, so therefore that's blocking some of the
21 light that would go through those windows?

22 MS. SPURLOCK: Um-hum.

23 VICE CHAIR MILLER: So they would get some
24 light, but --

25 MS. SPURLOCK: Right now, they are getting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some light, because the ones at the back that have the
2 -- that old townhouse, that structure is in pretty bad
3 shape, but if -- that's already there and so once
4 there is more put out in front of that, they really
5 lose their light.

6 VICE CHAIR MILLER: And how many
7 apartments are we talking about there, three?

8 MS. SPURLOCK: Yes, I think you are
9 talking about -- the first floor is already pretty
10 dark, so -- because it's already down there. The
11 second floor, the third and so what would that be,
12 probably three apartments.

13 VICE CHAIR MILLER: Thank you.

14 MS. SPURLOCK: Um-hum. At the back. They
15 asked me about the back, yes.

16 CHAIRPERSON GRIFFIS: Good. Cross?

17 MS. BROWN: I just have a couple quick
18 questions. When you say that the valuable decrease by
19 15 percent, does that mean that's the value that you
20 would put on the sale price? Because you're not an
21 appraiser, would you --

22 MS. SPURLOCK: No, I'm not an appraiser.
23 What that would mean, and I'm working on today's
24 prices, if -- to take an average of the apartments of
25 \$500,000, right now even knowing that this building

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would be going up, I would put a lower price on those
2 apartments.

3 MS. BROWN: For the three?

4 MS. SPURLOCK: At least the three, and the
5 other ones you have to let everybody know and so they
6 are going to -- you're going to get into some
7 negotiations any time there is a structure going up
8 beside them.

9 MS. BROWN: When were the plans for the
10 addition first made public to the community?

11 MS. SPURLOCK: I have no idea. I have
12 only been contacted last Friday on this project.

13 MS. BROWN: Okay. And do you have any
14 idea what the sales have been in the Woodrow since the
15 -- since last, oh, a year ago, April?

16 MS. SPURLOCK: I have copies here, yes.

17 MS. BROWN: And are you aware that those
18 prices reflect after the plans for this project were
19 made known at a three story version or with an extra
20 floor?

21 MS. SPURLOCK: I do know that the last
22 sale took place in September of '05 and I have a
23 record of what the person paid. Anything else, I
24 would say, would probably be hearsay.

25 MS. BROWN: And would you say that that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 dropped 15 percent from the previous values of the
2 building?

3 MS. SPURLOCK: I honestly don't know. I
4 was not involved in pricing it. I was not involved in
5 the sale. I'm just saying that --

6 MS. BROWN: That you don't know?

7 MS. SPURLOCK: Right. At that point, no,
8 I do not know.

9 MS. BROWN: You said that you studied the
10 plans for the new proposed addition. Are you aware
11 that the trash facility is completely enclosed within
12 the building?

13 MS. SPURLOCK: No, I was told that the
14 alleyway where the trash cans are now is going to be
15 used for the trash removal for the building, that
16 there really was not anyone that made it plain that
17 there would be trash anywhere else.

18 MS. BROWN: So you have no first hand
19 knowledge?

20 MS. SPURLOCK: No, I have none.

21 MS. BROWN: Are you aware that the Woodrow
22 building uses that alley, the private alley between
23 the Ney property and the Woodrow, are you aware that
24 they use that for their own trash removal?

25 MS. SPURLOCK: No, it doesn't appear to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have any trash cans in there at all. It does appear
2 to be a small little walkway that they can go out
3 there, but I honestly did not see any trash cans out
4 there.

5 MS. BROWN: Okay. Are you aware of the
6 easement that the Ney's have granted the Woodrow for
7 that?

8 MS. SPURLOCK: No, I was not told of that.

9 MS. BROWN: You have no knowledge about
10 how -- what type of air conditioning units would be
11 used in the building or where? You have no basis for
12 knowing what type of units, why they would need them,
13 you're just supposing that. Is that correct?

14 MS. SPURLOCK: Well, it gets pretty hot in
15 Washington in the summer and if you can't open the
16 windows, most of us go to air conditioning. So it's
17 a matter of choice whether they want to or not.

18 MS. BROWN: Right.

19 MS. SPURLOCK: I'm not saying anyone has
20 to.

21 MS. BROWN: Right. And then the co-op
22 building also has the option of putting in central
23 air.

24 MS. SPURLOCK: I would say in that
25 building it would be very difficult to put central air

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in. I think that that building, because of its age
2 and different things about it, would almost have to go
3 to window units. And I'm not an expert on that, so
4 that would be a matter of choice. I don't know.

5 MS. BROWN: Correct. You don't know. And
6 finally, you stated that there are three units per
7 floor and you said that two of the units were on the
8 north side of the building and that only one was on
9 the south side of the building, correct?

10 MS. SPURLOCK: Now, if I can figure out
11 which is the south. The side that faces the building
12 where the construction is expected to be, there are
13 two units, one in the front that has a front window
14 and then one behind it. And I did not go in the other
15 units that are on the other side.

16 MS. BROWN: Did you get an opportunity to
17 look at these photographs that were submitted to the
18 record?

19 MS. SPURLOCK: Just when she was showing
20 them.

21 MS. BROWN: Okay. Can you look at
22 photograph No. 1, look at the top floor of the
23 Woodrow?

24 MS. SPURLOCK: Um-hum.

25 MS. BROWN: And look at the one, two,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 three, fourth window over and can you see through to
2 the other side of the building?

3 MS. SPURLOCK: Yes, that's Helen and I
4 don't know her last name. That is her unit and she
5 will be probably looking out at the stairs or HVAC,
6 whatever that structure is that's on the top of the
7 drawings.

8 MS. BROWN: But you can see sky straight
9 through to the other side.

10 MS. SPURLOCK: She can. She has
11 absolutely the best apartment in the building, because
12 she will continue to have a terrific view.

13 MS. BROWN: So this back unit also has
14 southern exposure?

15 MS. SPURLOCK: Yes, she definitely does.

16 MS. BROWN: Okay.

17 MS. SPURLOCK: This one here, these
18 windows are what will be blocked.

19 MS. BROWN: And then --

20 MS. SPURLOCK: This one here not --

21 MS. BROWN: You've answered my question.

22 MS. SPURLOCK: Okay. Sorry.

23 MS. BROWN: And then this is a front unit
24 here that also has windows facing west?

25 MS. SPURLOCK: Whatever this is, this is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the front, yes.

2 MS. BROWN: Okay. So even with a wall
3 going up, every unit will still have either a western
4 exposure or a southern exposure?

5 MS. SPURLOCK: Um, yes, these units do go
6 through. These are the bedroom windows, yes.

7 MS. BROWN: And did you look at any shadow
8 or solar studies?

9 MS. SPURLOCK: No.

10 MS. BROWN: To determine how long they
11 would be in light?

12 MS. SPURLOCK: No, I did not.

13 MS. BROWN: Or darkness?

14 MS. SPURLOCK: I just previewed them
15 yesterday afternoon and that's all I did.

16 MS. BROWN: Okay. Thank you.

17 MS. SPURLOCK: Sure.

18 MS. BROWN: That's all.

19 CHAIRPERSON GRIFFIS: Thank you very much.

20 MS. SPURLOCK: Okay. Can I go?

21 MS. BEGGS: Um-hum.

22 MS. SPURLOCK: All right. I do need to
23 leave. Thank you.

24 (Whereupon, at 6:00 p.m. a recess until
25 6:01 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: How many more
2 witnesses do we have?

3 MS. BEGGS: This one should be very brief.
4 This one should be very rapid and then we have one,
5 two, three, four, five, each of which should be very
6 quick.

7 CHAIRPERSON GRIFFIS: Indeed. Does that
8 answer your question? I need to take two minutes.

9 (Whereupon, at 6:01 p.m. a recess until
10 6:02 p.m.)

11 CHAIRPERSON GRIFFIS: Okay. Let's move
12 ahead.

13 MS. BEGGS: Yes, would you state your name
14 and address for the record, please?

15 MS. ROTA: My name is Julia Rota, 1816
16 Kalorama Road, N.W.

17 MS. BEGGS: Julia, will you just describe
18 the pictures that were taken at your building at the
19 Woodrow that you plan to submit into evidence today?

20 MS. ROTA: Okay. The first picture on the
21 easel on the far right is taken from the Woodrow
22 building, Apartment No. 52, in the morning and it
23 shows a view of the California Street and the
24 California House and California Court. So you can see
25 what the sun is doing in the morning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay.

2 MS. BEGGS: And this is a typical view out
3 of a window looking northward from the Woodrow?

4 MS. ROTA: Yes.

5 MS. BEGGS: Okay.

6 MS. ROTA: About north/northwest.

7 MS. BEGGS: North to northwest, okay.
8 Next picture.

9 MS. ROTA: Okay. The next picture, which
10 is if you're following along in your packets, there is
11 No. 2 in that packet. That was taken in the middle of
12 March. It was kind of a cloudy day and it was around
13 6:00 in the afternoon. And that shows the sun coming
14 onto the little townhouse building and The Envoy,
15 which is what some of the windows look out onto from
16 the north/northwest side of the Woodrow.

17 CHAIRPERSON GRIFFIS: Excellent.

18 MS. ROTA: So that just gives you an
19 example of the light that comes in and that's on a
20 cloudy day.

21 CHAIRPERSON GRIFFIS: Clear.

22 MS. BEGGS: Next picture.

23 MS. ROTA: The next picture is again the
24 same day, Apartment No. 52. It was a cloudy day, late
25 in the afternoon and that just gives you -- I'm not an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 expert photographer at all, so I don't know how to
2 allow for light changes, but that just shows you that
3 the light directly comes in from the window. You can
4 see the reflection on the table and on the chair, on
5 the seat of the chair on a cloudy day. So on a not
6 cloudy day, the sun comes pouring right in.

7 MS. BEGGS: Okay. Now, we want to go to
8 the second board. Should we again label these
9 pictures 1 through 6?

10 CHAIRPERSON GRIFFIS: Do you see those?

11 MS. BEGGS: Would that be helpful if we
12 label them 1 through 6?

13 CHAIRPERSON GRIFFIS: Yes, 1 through 6 is
14 great.

15 MS. BEGGS: Okay.

16 CHAIRPERSON GRIFFIS: I'm sorry. I may
17 have missed it. What floor?

18 MS. ROTA: Fifth.

19 CHAIRPERSON GRIFFIS: This is the top
20 floor?

21 MS. ROTA: The top floor.

22 CHAIRPERSON GRIFFIS: Okay. Okay.

23 MS. BEGGS: That's where you live,
24 correct?

25 MS. ROTA: Currently, yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BEGGS: Okay.

2 MS. ROTA: Yes.

3 MS. BEGGS: Okay. We'll make No. 4 the
4 one from Woodrow 33. And the next board?

5 MS. ROTA: Okay. And the next board, that
6 was taken a couple of days ago on the 15th.

7 CHAIRPERSON GRIFFIS: You had your screen
8 filter on the camera that one.

9 MS. ROTA: From apartment -- actually,
10 that's just the window screen.

11 CHAIRPERSON GRIFFIS: Look at this one.

12 MS. ROTA: And we couldn't take the window
13 screen off.

14 CHAIRPERSON GRIFFIS: Indeed.

15 MS. ROTA: So it was taken through the
16 screen.

17 CHAIRPERSON GRIFFIS: I thought my eyes
18 were going.

19 MS. ROTA: No. No, they are fine.

20 CHAIRPERSON GRIFFIS: I didn't have any
21 focus on that one.

22 MS. ROTA: That's Apartment No. 33, so
23 it's one of the apartments in the back.

24 CHAIRPERSON GRIFFIS: Good.

25 MS. ROTA: That's mid-afternoon, a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 somewhat cloudy day. Okay. The second picture or I
2 guess --

3 MS. BEGGS: No. 5.

4 MS. ROTA: No. 5, sorry, that's the
5 interior view of the living room. The same time mid-
6 afternoon and it shows the light that comes pouring
7 directly in that illuminates the room and you can see
8 the shadows and the light and what's happening.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. ROTA: The sixth picture.

11 CHAIRPERSON GRIFFIS: Yes, all 33?

12 MS. ROTA: The same Apartment No. 33.

13 CHAIRPERSON GRIFFIS: Third floor or 33,
14 is that right?

15 MS. ROTA: Yes, yes.

16 CHAIRPERSON GRIFFIS: We're catching on
17 fast. Okay.

18 MS. ROTA: And this shows the light how it
19 goes all the way to the opposite end of the apartment.
20 It shows you the force of the light and how it
21 illuminates not only the immediate room, but the foyer
22 and also the far room at the other end all the way to
23 the back wall.

24 VICE CHAIR MILLER: I'm sorry, is this a
25 front apartment or a back apartment?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. ROTA: This is the back apartment.

2 VICE CHAIR MILLER: This is a back
3 apartment?

4 MS. ROTA: Back.

5 VICE CHAIR MILLER: Okay. Thank you.

6 MS. ROTA: Um-hum. And you can see the
7 reflection on the mirror how much light comes in.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. ROTA: And this is maybe around 3:00
10 or so. So the sun is still turning westward at that
11 time.

12 CHAIRPERSON GRIFFIS: Very good. Any
13 questions? Anything else? Any cross?

14 VICE CHAIR MILLER: I just have a question
15 on this back apartment. Where are there windows in
16 this back apartment?

17 MS. ROTA: Say that again?

18 VICE CHAIR MILLER: In the back apartment
19 there are windows that you are showing the light
20 coming through it, is the one that's across from where
21 the building might be built, correct?

22 MS. ROTA: Oh, yeah, yes.

23 VICE CHAIR MILLER: Okay. But where are
24 the other windows in the apartment?

25 MS. ROTA: One is farther back where the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 bedroom is and on that side that's it.

2 VICE CHAIR MILLER: On a different side.
3 Is that correct?

4 MS. ROTA: No.

5 VICE CHAIR MILLER: On the same side?

6 MS. ROTA: On the same side.

7 VICE CHAIR MILLER: Okay.

8 MS. ROTA: There is one bedroom window.
9 Did I get that right?

10 UNIDENTIFIED SPEAKER: If you don't, say
11 you don't know, because you don't live there.

12 MS. ROTA: Oh, well, I don't live there,
13 that's true.

14 CHAIRPERSON GRIFFIS: But I think your
15 question is very simple and it would be typical of all
16 the back apartments. She is trying to establish where
17 the windows are. Take 33, that you were in their
18 photographing it, 33, 43, 53, maybe that's the way it
19 goes. The back apartments, where are the windows?
20 That's your question, is that right?

21 VICE CHAIR MILLER: Yes, yes, that's my
22 question.

23 CHAIRPERSON GRIFFIS: So we just need to
24 have someone that can answer that question and pull it
25 together here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. STARR: I have a back apartment and
2 mine is unusual because I'm on the top floor. So I'm
3 speaking only about where the windows are and not
4 about the impact of light or no light. There are
5 windows on three sides. There are the windows that
6 you see in the photographs which are very important
7 windows.

8 In the back apartments those are the
9 living room. They are not merely bedroom and kitchen.
10 For me it's my living room window, it's my bedroom
11 window, and for everybody below me it's the same.
12 Then we have windows on what is the east side of our--
13 approximately, the east side of our building.

14 Those windows face onto The Envoy, which
15 is a nine story building that is about 50 feet away or
16 so. I mean, I can't really measure it because it's
17 thin air, but about 50 feet away, and I don't know
18 about the other owners of back units, but I have a
19 shade or a shutter on every one of those windows and
20 I never open them at all. It's just light that you
21 have to give up because there is no privacy. There is
22 -- you know, you're dominated by this nine story
23 building.

24 Then coming around there are windows on
25 the building in our units that face to the southeast.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 In my unit I'm fortunate because those look into some
2 roof terraces on townhouses, but they are not fully
3 blocked. As you go farther down, they are definitely
4 blocked by the next, the houses next door. And while
5 I have returned --

6 VICE CHAIR MILLER: Wait, and how far away
7 are those compared? You said one side was -- you had
8 windows that were 50 feet away, approximately, from
9 the building across from it and on this third side,
10 how far away are they from the other building?

11 MS. STARR: Probably about 10 feet, 10
12 feet, very close.

13 CHAIRPERSON GRIFFIS: Anything else?

14 MS. STARR: If I could, if you're done
15 with that, I would like to just -- as long as I have
16 come back up here, because I am the person who bought
17 the apartment for \$550,000 last fall. There was the
18 question asked by the applicant's attorney of our
19 witness as to whether those prices would have already
20 reflected or should not have already reflected this
21 proposed project because, in my case, that sale
22 occurred after this project originally was discussed.

23 And I do want to say that I asked. I was
24 not familiar with the neighborhood. I haven't been
25 living in the neighborhood for many years and I was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 advised by a friend who lives in a nearby building to
2 ask the listing broker whether there was a project
3 going up next door, and the listing broker expressly
4 said to me there will never be a project there. They
5 will need too many variances.

6 I offered full price and I settled in two
7 and a half weeks. And had I known, had I been told
8 that this had already been to HPRB, I can assure you
9 I would not have paid full price. I probably would
10 have offered under \$500,000.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. STARR: And I'm pretty clever about
13 buying real estate, so I think that the 15 percent
14 that Mrs. Spurlock referred to is probably right for
15 me just knowing that it could go up.

16 CHAIRPERSON GRIFFIS: Okay. I appreciate
17 that.

18 MS. STARR: And I think it --

19 CHAIRPERSON GRIFFIS: We're delving well
20 into speculation.

21 MS. STARR: We're definitely into
22 speculation, but we have another agent we asked who
23 lives in the neighborhood who has --

24 CHAIRPERSON GRIFFIS: After your story
25 we're supposed to rely on the testimony of the agents?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Okay. Sorry.

2 MS. STARR: Well, no, we have a letter
3 that we haven't gotten in yet and we would like to get
4 it in.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. STARR: This is probably an
7 appropriate time, so we can move onto other issues,
8 and this is a letter from Jim Bell from Washington
9 Fine Properties who lives in our neighborhood, has
10 sold units in our building and knows our neighborhood
11 thoroughly.

12 And we asked him would you tell us what
13 you think might happen to the value of our buildings,
14 would there be -- of our units facing this project,
15 would there be diminishment in value because of the
16 loss of light. And, coincidentally, he picked 15
17 percent and we have his letter, too.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. BEGGS: Hand it up. Phil Hendrickson?
20 Oh, I'll give it to him. Would you state your name
21 and address for the record?

22 MR. HENDRICKSON: Yes. My name is Phil
23 Hendrickson and I live at 1835 Phelps Place in
24 Washington, D.C, otherwise known as the Woodrow.

25 VICE CHAIR MILLER: I'm sorry, could you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 repeat your name? We missed it.

2 MR. HENDRICKSON: It's Phil Hendrickson.

3 MS. BEGGS: And, Phil, could you describe
4 for the Board what you believe would be the impact on
5 your building and your personal circumstances if this
6 project were to go forward?

7 MR. HENDRICKSON: Yes. Firstly, let me
8 first say that I am here in two capacities, one as an
9 owner and a resident of the Woodrow and, two, as the
10 president of the Woodrow Co-op. So I am speaking
11 today also for many of the members who can't show up
12 today to speak about this project and you will hear
13 from many, as you have already done so, about their
14 feelings. But I can speak for the rest of the Woodrow
15 and I will speak for myself as well.

16 I moved -- I was born here in D.C. and I
17 moved back after living in several different cities
18 across the country to live and raise a family in
19 Washington, D.C. and I chose the Woodrow for several
20 reasons, for light, for the air, for the safety and
21 for the quiet of the neighborhood. My wife is a
22 professor and she works from home so the living room,
23 which is the window that you have been speaking about,
24 which is bathed in light in the afternoon, is where
25 she reads and writes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 It is also the playroom for my daughter
2 who is a year and a half and we are planning on having
3 another child later this year. So we are, hopefully,
4 looking to raise a family in the Woodrow and we chose
5 this building because of its light and air, safety and
6 quiet.

7 I am a graphic artist and light and air
8 are two very essential parts of my life and my
9 happiness living in the Woodrow, and the prospect of
10 having a wall and terraces replacing the view and the
11 light and the constant air that comes through our
12 northwest facing windows would change dramatically our
13 life in the building. I think it's fair to say, like
14 Helen just mentioned, I would have thought twice and
15 perhaps not chosen to move into the Woodrow had this
16 structure existed or if I knew that the structure
17 would exist in the future.

18 And based on the testimony you have heard
19 from real estate agents and perhaps your own thoughts
20 about the market and purchasing a home, the thought of
21 a 15 percent diminishment in values would equate for
22 our building to a little over a million dollars in
23 loss of value for the 15 units. Shall I continue?

24 I wanted to state also that it was
25 mentioned earlier that the alley between the Woodrow

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and the proposed project building to our north, I want
2 to make it very clear here that we do not use that
3 alley for garbage. Our trash is kept in our basement
4 and is carried out through the front door of our unit.
5 So we don't use the alley at all for garbage.
6 Occasionally, people will go out that back alley or as
7 egress from our back patio, but it is not used by the
8 Woodrow for garbage.

9 Further, the prospect that I have heard
10 that there will be a scooter on-ramp/off-ramp through
11 the alley is extremely disconcerting. If any of you
12 have ridden scooters or been around scooters -- our
13 living room window looks out over this building and we
14 have our windows open all the time.

15 It's a lot of -- it seems like all the
16 wind in D.C. comes from that direction. I don't get
17 any wind coming in from any of the other windows in
18 our building. So, as previous testimony to the effect
19 of air, I can say as a matter of fact that these
20 windows that face northwest provide more than just
21 light. They provide lots of fresh air. Okay.

22 As you have heard, the church across the
23 street also serves as a day care center where I take
24 my daughter and we are quite fortunate to have a day
25 care center across the street. And I just would like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to say that with current traffic conditions, I can
2 easily say that the most dangerous thing I do with my
3 daughter every day is crossing the street in front of
4 our building.

5 There is just a good deal of traffic today
6 and the thought that there would be additional traffic
7 and/or scooters racing out of the sidewalk and down
8 the street is just something that I would consider a
9 safety hazard for me and for my family.

10 CHAIRPERSON GRIFFIS: Very well. Anything
11 else?

12 MS. BEGGS: There's nothing further.

13 CHAIRPERSON GRIFFIS: Questions?

14 MS. BEGGS: Nothing further.

15 VICE CHAIR MILLER: I just have a few
16 quick questions. Which apartment are you in?

17 MR. HENDRICKSON: 23.

18 VICE CHAIR MILLER: So are you in the
19 front, the back?

20 CHAIRPERSON GRIFFIS: Back, second floor.

21 VICE CHAIR MILLER: Second floor, back.
22 Okay.

23 MR. HENDRICKSON: Yes.

24 VICE CHAIR MILLER: And how many units
25 make up the co-op?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HENDRICKSON: 15.

2 CHAIRPERSON GRIFFIS: 15.

3 VICE CHAIR MILLER: 15? And did you all
4 have a meeting about this, a vote, a statement? I
5 mean, you said you represent them.

6 MR. HENDRICKSON: Yes.

7 VICE CHAIR MILLER: Did --

8 MR. HENDRICKSON: Well, as the board
9 represents the Woodrow, all the residents vote for who
10 is on the board, and as the previous board had a
11 position on this and that position is the same as the
12 current board.

13 VICE CHAIR MILLER: I mean, was there a
14 vote on the position or are you just -- because they
15 have elected you, you present a position?

16 MR. HENDRICKSON: I don't understand your
17 question.

18 VICE CHAIR MILLER: I'm saying like the
19 ANC has a vote, did you all have a meeting and take a
20 vote as to your position in this case?

21 MR. HENDRICKSON: Yes.

22 VICE CHAIR MILLER: Did you submit
23 something in the record reflecting that or you're just
24 -- you're saying your testimony reflects that?

25 MR. HENDRICKSON: We not only agreed as a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 board and voted by taking petitions of people and
2 current residents, and those residents who were here
3 last year, but the board also voted to spend \$5,000 of
4 the Woodrow's money in fighting this effort. So we
5 went further than just expressing opinions that no,
6 we're against this or we would prefer this not to
7 exist, but the Woodrow and its members voted to put
8 money on the table.

9 VICE CHAIR MILLER: Okay. Thank you.

10 MS. BEGGS: Marie Drissel.

11 CHAIRPERSON GRIFFIS: Do we have any
12 cross?

13 MS. BEGGS: Oh, I'm sorry.

14 CHAIRPERSON GRIFFIS: That's all right.
15 Any other questions?

16 MS. DRISSEL: Good evening. Good evening.
17 My name is Marie Drissel. I live at 2135 Bancroft
18 Place and, fortunately, I just flew in from Florence,
19 Italy last night, but I am on jet lag time, so that
20 may be good for you.

21 CHAIRPERSON GRIFFIS: We cannot talk to
22 that.

23 MS. DRISSEL: Because I'm going to try
24 real fast to get this done, but I'm going to be
25 presenting Sheridan-Kalorama Neighborhood Council's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 position as an organization.

2 And part of my submission, which I'm going
3 to turn around and give to everyone right now, is that
4 an expert at Coldwell Banker went over the rents and
5 he is both a person who is a broker at Coldwell
6 Banker, he also is a writer, a regular column writer
7 in one of the major residential, I mean, real estate
8 newsletters in Washington, D.C.

9 So should I just turn around and give it
10 to everybody and then go into my testimony?

11 CHAIRPERSON GRIFFIS: That would be good.

12 MS. DRISSEL: Okay. I am here to present
13 Sheridan-Kalorama's position. We are a neighborhood-
14 wide organization. We have been in existence for 50
15 years. Our members include homeowners, renters,
16 ambassadors, diplomatic staff, business owners in the
17 neighborhood.

18 We believe that there will be significant
19 public harm if the present design is approved. We
20 believe that this addition and change on the first
21 floor will have deleterious effects, including the
22 diminishing of air and light to surrounding buildings,
23 particularly the Woodrow, noise, traffic, parking,
24 loading considerations, illumination, vibrations, odor
25 and streetscape effects.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 During Mr. Joseph Ney's financial
2 presentation at the BZA hearing on March 14th, he
3 stated that the debt coverage ratio in his
4 calculations would not meet the standards of a bank
5 requiring 1.2 versus a 1.06 ratio. Mr. Ney said that
6 he is not a developer and did not present his economic
7 data as an expert. Today I am presenting recent
8 rental information, which reviews his numbers and
9 demonstrates that he is overestimating the income of
10 the apartments by \$4,505 per month as prepared by an
11 expert, Frederick Kendrick, a realtor and writer for
12 the monthly Washington Metropolitan Real Estate
13 Publication.

14 Unlike Mr. Ney or any rental financial
15 presentation on the applicant's behalf, Mr. Kendrick
16 is familiar with this neighborhood. He questions the
17 plausibility of a projected rent of \$4,832 for
18 essentially a fourth floor walk-up apartment 17 feet
19 above the first floor and 11.9 feet to walk above the
20 second floor or 43 steps, assuming risers of 8 inches.
21 This apartment will not provide parking either.

22 Further, Mr. Kendrick questions the
23 projected rental amount of \$2,954 for the first floor
24 apartment because it is so dark and, again, has no
25 parking or other amenities, such as a front desk.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 During the hearing, Mr. Ney also was not sure if the
2 numbers he presented, as expenses to construct the
3 project, including the requirements made by the
4 Historic Preservation Review Board, were to restore
5 the exterior of the existing one-story Italian
6 renaissance style building.

7 The Historic Preservation Review Board was
8 emphatic that they expect a high quality restoration,
9 so this omission is a material omission from the cost
10 data. If we follow his numbers, Mr. Ney is stating
11 that he will net \$29,000 annually. Mr. Kendrick
12 states that he will be in the hole \$24,000. At
13 present using Mr. Ney's figures, the existing rent is
14 clearing \$88,000 minus \$10,000 for property taxes with
15 no debt service.

16 According to Ms. Brown, this is not
17 relevant to BZA case law because in non-use variance
18 cases, economic hardship is not at issue. I'm not
19 going to repeat that, but we disagree with that. We
20 only mention this because we believe that if our
21 numbers are not relevant, neither are Mr. Ney's. He
22 was not sworn in as an expert in the finances of the
23 case and said that he is not developer, and Mr. Sher
24 and Mr. Hensley were also not sworn in as financial
25 experts.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Under the practical difficulties argument,
2 we have seen the practical and simple arguments made
3 that because it is a contributing historic site and
4 cannot be torn down and because it has special
5 architectural challenges, including meeting the
6 current modern Building and Fire Code, then the 107
7 square feet is absolutely necessary to cover all of
8 the non-rentable parts of the new and existing
9 building.

10 But from a practical non-hardship point of
11 view, we have no expert presenting the incremental
12 practical financial proof. Mr. Sher and Mr. Hensley
13 both stated that Mr. Ney needed the extra 107 square
14 feet on the second floor for economic reasons. We
15 find it hard to believe that they could not configure
16 the second floor to accommodate two one bedroom
17 apartments without the extra footage.

18 The development team suggests that every
19 draft of this project is teetering on the edge of
20 viability. Yet, they keep recasting the project in
21 these slightly different scaled down forms. Whoever's
22 figures are more credible, and I suspect those
23 submitted today by Mr. Kendrick are, 107 feet can't
24 make a big a difference that they can't be cut out and
25 this variance request avoided.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 What we see, what we will see and what
2 Sheridan-Kalorama as an organization is concerned
3 about, is that we will not have the quality of
4 structure which makes this neighborhood what it is
5 known for and it will deteriorate right away if
6 completed before the money dries up. With a net of
7 \$88,000 less the \$10,000 for property taxes, Ms.
8 Pauline Ney chooses not to keep this property from
9 deteriorating.

10 I just want to quickly -- and I will say
11 it just very briefly. I have been in this
12 neighborhood for 26 years and I have never seen this
13 kind of opposition, except for one other case which
14 was a big zoning case on Massachusetts Avenue. So I'm
15 just jumping to that to tell you that this is really--
16 this family has been in our neighborhood for three
17 decades and they don't have a single person here or an
18 organization that is supporting what they are doing.

19 And then I just want to jump to the last
20 part and that is that, by default, I believe that they
21 are trying to get a marketing scheme through here and
22 I want to go on the record that we object to both two
23 things that are here, and one is the back door waiver
24 of the parking requirements. We are opposed to it.
25 We don't care who is in charge of it right now. We're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on record that we're opposed to it.

2 The second little thing that is happening
3 here that is another back door thing is that they are
4 saying that they are going to change the loading dock
5 in front, the commercial spaces. We're not going to--
6 because they are going to put in Zipcars or Flexcars.
7 This is a marketing scheme, but besides that we don't
8 want the back door.

9 We don't want BZA to kind of forget that
10 this is being requested here because we're very
11 opposed to changing this commercial loading space, and
12 they are going into some kind of technicalities and we
13 haven't had time to review them. We haven't had time
14 to figure out who is in charge, but we're opposed to
15 it. And we don't know why they have spent so much
16 time on a marketing scheme. It's really weird to us
17 that they are spending your time on this scooter and
18 Zipcar thing, but whatever it's about we're opposed to
19 it. Thank you.

20 CHAIRPERSON GRIFFIS: Thank you very much.
21 Questions?

22 VICE CHAIR MILLER: I just want to ask
23 this for background like I asked Mr. Kendrick, I
24 guess, before. How does the Sheridan-Kalorama Council
25 arrive at a position? Do you have a board or --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. DRISSEL: We have a board. We had an
2 executive meeting. We are elected at the annual
3 meeting. We had an executive meeting and we voted to
4 oppose it and to put money behind our opposition.

5 VICE CHAIR MILLER: Okay. Thank you.

6 CHAIRPERSON GRIFFIS: Excellent. Any
7 other questions, cross? Quick cross?

8 MS. BROWN: I don't have cross, but I do
9 have an objection to this letter being qualified as an
10 expert letter. We haven't had an opportunity to cross
11 examine or --

12 CHAIRPERSON GRIFFIS: Sure.

13 MS. BROWN: -- challenge any of the
14 representations in here. So, you know, to the extent
15 that it's accepted into the record that it's just
16 given the face value and not given any more import
17 than it deserves.

18 CHAIRPERSON GRIFFIS: Right. I wasn't of
19 the understanding that we were accepting this as
20 expert testimony.

21 MS. DRISSEL: No.

22 CHAIRPERSON GRIFFIS: Or a letter, but
23 rather --

24 MS. DRISSEL: Right.

25 MS. BROWN: I did hear Ms. Drissel --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. DRISSEL: No, no.

2 MS. BROWN: -- refer to him as an expert.

3 MS. DRISSEL: I did, but I said if Mr. Ney
4 isn't an expert and we're not an expert, there has
5 been no expert here that has been sworn in as an
6 expert saying we have proven conclusively that we need
7 that 107 additional square feet.

8 CHAIRPERSON GRIFFIS: Okay. Excellent
9 point. Okay. Anything else? Very well. Thank you
10 very much. Next?

11 MS. BEGGS: Yes, Nelly Guacheta.

12 MS. GUACHETA: My name is Nelly Guacheta.
13 I live at the Woodrow Wilson, Apartment No. 33. I am
14 the one that you saw the pictures earlier and I will
15 be living, basically, in the dark in the future if
16 this project goes through.

17 I definitely oppose to this project for
18 many reasons, one, because of the light I will be
19 missing. I enjoy having house plants, which you can
20 see in the picture, and I will be losing them also.
21 But my main concern is I open the windows. I depend
22 on fresh air for my unit.

23 My husband is sick and sometimes he cannot
24 go out, so I open the windows a lot and I'm concerned
25 if this project goes through, I won't be able to open

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the windows because of the smell that is coming --
2 that may come back from the alley of the trash and I
3 will lose that. So that is one of my main concerns
4 that I am -- that's what I'm here for.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you.

7 MS. BEGGS: Nothing further.

8 CHAIRPERSON GRIFFIS: Cross, questions?

9 MS. BROWN: No cross.

10 CHAIRPERSON GRIFFIS: Thank you very much.

11 MS. BEGGS: Oh, I do, I do have one more
12 question. Nelly, how long have you lived in the
13 Woodrow?

14 MS. GUACHETA: Yes, I have lived in the
15 Woodrow for 31 years. I raised a son there and that
16 has been my home for, I mean, since I came to this
17 country. I am from Colombia, South America and the
18 Woodrow has been my home since I came to this country.
19 And I love the Woodrow and I will hate me to lose what
20 I have and I have enjoyed for so many years.

21 CHAIRPERSON GRIFFIS: Thank you very much.

22 MS. BEGGS: Kindy French.

23 MS. BROWN: Can I have a point of
24 clarification? I'm not sure how many more witnesses.
25 I know that we were limited at 40 minutes and I'm just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hoping that we can --

2 MS. BEGGS: One more after Kindy. Do you
3 want to?

4 MS. FRENCH: Hi. I'm Kindy French,
5 President of the Sheridan-Kalorama Historical
6 Association. The SKHA opposes this project based on
7 its deviation from acceptable architectural
8 preservation principles, its impact on the access to
9 light and air by the residents of the Woodrow and its
10 attempt to appropriate a true civic space of the
11 neighborhood, the corner of California Street and
12 Phelps Place.

13 While architectural preservation issues
14 are technically not the purview of the BZA, zoning
15 principles are the basic instruments of urban
16 preservation. Urban preservation, like architectural
17 preservation, is concerned with compatibility and
18 appropriateness of the relationship between groups of
19 buildings, public spaces and neighborhoods.

20 In many neighborhoods in the city, a new
21 Metro stop or major new investment, a ballpark for
22 example, often provoke a reevaluation of densities and
23 use. Greater densities around such major investments
24 are clearly in the public interest. This
25 neighborhood, however, has been remarkably stable, as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 evidenced by the fact that the property at 2160-62
2 California has served as a market for 90 years.

3 The public interest is served by the
4 preservation of the character, the use and the
5 openness of this grouping of buildings and wide
6 sidewalks, which includes 2160-62 California, the
7 church building across Phelps Place and the open
8 courtyard entrance to 2153-2205 California Street, as
9 you have seen in the pictures, which frames the entire
10 space.

11 Filling the air space above 2160-62 will
12 eliminate this breathing space for the entire
13 neighborhood and mostly act acutely for the residents
14 of the Woodrow, which was no doubt designed with an
15 understanding that its northern exposure would always
16 rely on this openness.

17 Finally, the very uniqueness of this
18 property, which gives it its standing as a
19 contributing structure in a Historic District in the
20 first place, is being used as a lever to pry open the
21 door to zoning variances. This is clearly a
22 perversion of the intent of historic preservation
23 statutes and the BZA should deny the request for all
24 variances. Thank you.

25 CHAIRPERSON GRIFFIS: Thank you very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BEGGS: Guy McMichael.

2 CHAIRPERSON GRIFFIS: Any questions?

3 MS. FRENCH: Any questions? Sorry.

4 MS. BEGGS: I keep forgetting that part.

5 MS. FRENCH: If nobody asks me a question,

6 I will be insulted.

7 VICE CHAIR MILLER: I'm just trying to

8 absorb what you just said.

9 MS. FRENCH: Okay.

10 VICE CHAIR MILLER: So this question is

11 not going to be fully articulated, but I'm kind of

12 interested in your concept of urban preservation and

13 how you see that as being within the jurisdiction of

14 the BZA. It's just a concept, terminology we don't

15 usually hear.

16 MS. FRENCH: Well, I --

17 VICE CHAIR MILLER: Did you make it up?

18 I mean, did you?

19 MS. FRENCH: At 6:35, yes. I mean, you

20 obviously have leeway to balance many things and I am

21 just bringing my issue to you directly.

22 VICE CHAIR MILLER: Thank you.

23 MS. BEGGS: Guy McMichael.

24 MR. McMICHAEL: I know it's late. I think

25 I can do this in about four minutes and then,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 hopefully, we're through. My name is Guy McMichael
2 and I am president of the California House Condominium
3 Association and I speak on its behalf.

4 For over 20 years I have lived in a fifth
5 floor apartment which directly overlooks the
6 intersection of Phelps Place and California Street.
7 Our community has seen substantial changes over the
8 past 20 years. These changes in traffic, parking,
9 congestion and safety, particularly at the residential
10 intersection of Phelps Place and California Street,
11 have produced a situation which is very near the
12 breaking point.

13 This is the first time that our
14 association has ever opposed a project in this
15 neighborhood. We are concerned that the proposed
16 apartment rental units, with the inevitable addition
17 of traffic and cars belonging to new residents and
18 those who will visit them and with the provision of no
19 new parking spaces, will constitute a tipping point,
20 if you will, or the straw that breaks the camel's back
21 and will result in chaos, gridlock and a safety threat
22 that may produce serious injury.

23 Let me briefly set the scene that is
24 played out in front of my window on a daily basis.
25 California Street from Connecticut Avenue to Phelps

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Place is a one-way in a westerly direction.
2 Thereafter, California Street from the intersection of
3 Phelps Place westward to Massachusetts Avenue is two-
4 way. It's my understanding that the portion of
5 California Street that is one-way was previously two-
6 way, but that parking was allowed only on one side.

7 To alleviate parking shortages,
8 particularly acute in an area with so many reserved
9 diplomatic parking spaces, that part of California was
10 changed to one-way to permit parking on both sides.
11 Because there is a hill on the one-way portion of
12 California, cars frequently accelerate as they
13 approach the Phelps Place intersection.

14 Conversely, cars proceeding eastward on
15 California as they approach the intersection often
16 miss or ignore that they cannot continue down
17 California Street. This happens almost on a daily
18 basis with accidents narrowly avoided and congestion
19 that builds as cars back up. Gridlock at the
20 intersection of California and Phelps is more the norm
21 than the exception.

22 Add to this congestion and safety threat
23 the large number of FedEx, UPS, Postal Service,
24 plumbing and electric service trucks, as well as those
25 servicing the corner store which are constantly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 present. Now, add in moving trucks to accommodate the
2 frequently changing rental apartments. Needless to
3 say, none of the foregoing is aided by the recent
4 proliferation of high wide-bodied SUVs which are now
5 parked on both sides of California and Phelps Place,
6 narrow residential streets built for an earlier
7 generation of much smaller cars.

8 Add to all of this the many important
9 community services provided to the Hispanic community
10 by Our Lady, Queen of the Americas Church located at
11 the intersection of the two streets, which
12 significantly adds to the traffic and the demand for
13 parking. Of particular concern to me is the bilingual
14 day care center.

15 Every morning I see parents late for work
16 driving at a fast clip down California and turning
17 onto Phelps, stopping at the side entrance and
18 attempting to quickly drop off their young children.
19 On more than one occasion I have seen accidents
20 narrowly averted. The potential for a tragic accident
21 cannot be overestimated. If there is another
22 intersection of two purely residential streets in the
23 District that is more congested, I would be surprised.
24 At a minimum we have to be in the top 10.

25 All of these problems are difficult and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not easily resolved. One thing that can be done,
2 however, is not to add to the problem and diminish the
3 quality of life by constructing rental units that will
4 darken the corner, add to the traffic and demand for
5 already severely limited parking places, as well as
6 increasing potential safety threats.

7 Please, note that because this is of no
8 apparent concern to the Board, I have not even
9 addressed the chaos that will occur during the
10 construction phase. We urge the Board not to approve
11 the project.

12 CHAIRPERSON GRIFFIS: Thank you very much.
13 Questions?

14 VICE CHAIR MILLER: How many units do you
15 represent?

16 MR. McMICHAEL: 24.

17 VICE CHAIR MILLER: 24? And in reaching
18 this position, was there a meeting and a vote?

19 MR. McMICHAEL: There was a board meeting
20 and vote supporting it and also supporting money to
21 oppose the project.

22 VICE CHAIR MILLER: Thank you.

23 CHAIRPERSON GRIFFIS: Any other questions?
24 Cross? Excellent. Thank you very much.

25 MS. BEGGS: Mr. Chairman, there is one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 final matter that I am happy to say that we wanted to
2 bring in Father Mateo who is the pastor of the Our
3 Lady, Queen of the Americas Church, but he -- this was
4 the end -- of course, we just had Easter and at the
5 same time as preparing for all the additional masses
6 that they had there at that time, is also
7 matriculating toward his doctorate in canonical law
8 and could not be here, and also because of his
9 busyness he couldn't get a letter in.

10 But I can put into the record what I know
11 based on an interview and I would like to keep the
12 record open so that we can have him complete the
13 letter, but his testimony would show and my
14 observations can confirm that the church is an
15 extremely active one. It has the day care center that
16 you have heard about that operates from 7:00 a.m. to
17 6:00 p.m. every day.

18 MS. BROWN: I have an objection to this.
19 I mean, the witness had the opportunity to come here.
20 The witness had the opportunity to submit a letter.
21 We have all known about this continuation since March
22 14th. I don't know that there is any --

23 MS. BEGGS: Well, I'm testifying from my
24 personal knowledge, Ms. Brown.

25 CHAIRPERSON GRIFFIS: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BEGGS: I live across the street.

2 CHAIRPERSON GRIFFIS: I understand. She
3 is bringing up a legitimate objection to having you,
4 because you actually said you would put into the
5 record his testimony, so I --

6 MS. BEGGS: Well, no, I said -- and I said
7 I would also testify from my personal knowledge
8 because I live across the street from this.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. BEGGS: I observe it all the time. I
11 have been into that church on many occasions and I
12 have had many interactions --

13 CHAIRPERSON GRIFFIS: Right.

14 MS. BEGGS: -- with both Sister Cariedad
15 who runs the day care center and Father Mateo.

16 CHAIRPERSON GRIFFIS: Understood.

17 MS. BEGGS: Who runs the church.

18 CHAIRPERSON GRIFFIS: It's active with the
19 day care.

20 MS. BEGGS: Beg your pardon?

21 CHAIRPERSON GRIFFIS: It's active with the
22 day care. What else do we need to know about it?

23 MS. BEGGS: Okay. It looks after 80
24 children who are 6 months to 5 years-old. It has a
25 very active gymnasium. It runs an adult education

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 program that has students numbering between 300 and
2 500, depending on what semester it is.

3 It is actively attended by nearby
4 residents. You will literally see hundreds of people
5 streaming in there on any given Sunday and the church
6 is also a residence, which all of us are well-aware
7 of, in our neighborhood for Cardinal McCarrick, two of
8 his auxiliary bishops and three other priests and they
9 have daily mass there at 8:15 every morning and they
10 have three Sunday masses.

11 One of the points that is readily apparent
12 with respect to this view is that because this church
13 caters to the Latino community, most of whom live on
14 the other side of Connecticut Avenue, the foot traffic
15 comes that way. So this is not a city scape that
16 would just be lost on our neighborhood, but also many,
17 many, many of the parishioners who stream in on a
18 daily basis and at least on a Sunday basis. That's
19 it.

20 CHAIRPERSON GRIFFIS: Okay. Understood.
21 Thank you. Anything else?

22 MS. BEGGS: No. She can cross examine me
23 if she wants.

24 CHAIRPERSON GRIFFIS: I don't think there
25 is any cross?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BROWN: No cross.

2 CHAIRPERSON GRIFFIS: Okay. Let's
3 continue. Anything else?

4 MS. BEGGS: No.

5 CHAIRPERSON GRIFFIS: Any closings? It's
6 your opportunity to close.

7 MS. BEGGS: Oh, I close first?

8 CHAIRPERSON GRIFFIS: Absolutely.

9 MS. BEGGS: Okay. Okay. We have already
10 presented all the legal arguments in our opening and
11 I won't repeat those here. I would like to focus on
12 the closing in the -- on the prong of the test that
13 focuses on public harm, which is precisely what our
14 testimony today has been for and so I will try to go,
15 you know, as quickly as possible. I don't think you
16 need a big summary of it.

17 But I started to ask myself why are we
18 here and when you go through the transcript, it's at
19 page 249, Mr. Ney told us it's because he has a dream
20 to have these residences on top of the store. In the
21 view of our neighborhood, dreams for some are
22 nightmares for others. We believe, which we have
23 already put into the record, that very significant
24 variances are needed. The 64 percent lot occupancy
25 variance calculates out to a 6.67 percent above what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is permitted under the regulation.

2 There has been testimony that the variance
3 is actually only, I mean, the lot occupancy is
4 actually only 62.6 percent of the lot. That
5 calculates out to a 4.33 percent increase over what is
6 allowed under the regulation and we think that neither
7 of these is insignificant.

8 The structural alteration is significant.
9 It will entail columns and footings for -- to support
10 42 feet of new construction. It will need joists
11 and beams sufficient to support those two new floors.
12 Major roof changes will be needed for the new floors
13 and new footings will be needed to support the
14 columns.

15 This, again, we have already discussed
16 this, is very similar to what the Board rejected in
17 the Lenkin case, and I just want read what the BZA
18 opinion said about that. It said "The subject
19 premises is a nonconforming structure devoted to a
20 nonconforming use. The applicant proposes to make
21 substantial alterations to the structure, including a
22 new third floor, a bay window and rebuilding the
23 courtyard. These are not minimum alterations to a
24 nonconforming structure." And this was the reasoning
25 as the Board went on to reject the requested

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 variances.

2 And in that case they were not asking for
3 a lot occupancy variance. They were only asking for
4 a variance as to the structural alternations to
5 support the new structure. I think we have been
6 through the other variances and I don't think I have
7 anything to add that we haven't already argued
8 earlier.

9 I would like to address the argument that
10 the applicant has made that she needs these -- that
11 she has practical difficulties because her son's
12 project is not economically feasible without having
13 the variances, so I want to suggest as a threshold
14 matter that all of the economic information that was
15 submitted by the applicant should be stricken from the
16 record and disregarded in its entirety -- entirety,
17 rather.

18 There was no expert testimony given as to
19 that and the applicant tells us he is a communications
20 man. He didn't even attempt to qualify himself in
21 terms of being able to figure out what potential rents
22 were going to be or what construction costs were going
23 to be. So there is -- so I believe as a better first
24 principle, everything that he has put in the record on
25 the economic feasibility point should just blatantly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be disregarded and it should be treated as though
2 there is no such argument.

3 There has also been absolutely no showing
4 that the existing operation is not economically
5 feasible. We're aware that from the store alone he
6 gets \$5,400 a month in rent. We don't know how much
7 he gets from the real estate office, but we suspect
8 it's probably comparable.

9 And we do rely on the language in the
10 Palmer case that a variance cannot be granted where
11 property conforming to the regulation will produce a
12 reasonable income, but if put to another use will
13 yield a greater return. Well, we think that is still
14 good law. The cases, with the exception of cases that
15 show severe economic hardship, do not appear to
16 support a proposition that it's a practical difficulty
17 just because you can make a little bit more money for
18 something.

19 And, now, I just want to turn to just very
20 quickly the compelling factors that we think weigh
21 very heavily on the public interest prong of the
22 neighborhood. We heard testimony today that the
23 impact on the Woodrow Cooperative will be devastating.
24 It will have -- it will profoundly diminish their
25 current light. Their ventilation will be greatly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 diminished. There will be a great increase in the
2 noise and the trash, alleys with scooters roaring
3 through and the installation of HVAC compressors just
4 outside the windows. The terraces will greatly
5 diminish the privacy of the Woodrow residents.

6 But it's not just the Woodrow that would
7 be very adversely affected. First of all, this view
8 is very important to our neighborhood and it will be
9 lost forever if this project goes forward not just to
10 us, but to the parishioners at our neighboring church.
11 The congestion, the additional congestion, is almost
12 a given. We're going to have four residences. That
13 means at least four more cars on an intersection that
14 really cannot accommodate any more.

15 We understand that the Board, by the way,
16 disagrees with our interpretation of the parking
17 regulations, but we do want to preserve that point.
18 It's eventually going to have to go up someplace and
19 get resolved, given that the Zoning Administrator
20 takes a contrary view to what the Board takes. So one
21 of these days somebody is going to have to resolve and
22 I hope it's not in this case.

23 I think that's really all I have. Oh, I
24 have got a couple more petitions. We have been
25 handing these in all along. Do I just hand them up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 over to the secretary?

2 CHAIRPERSON GRIFFIS: Yes. How many
3 copies do you have?

4 MS. BEGGS: Unfortunately, this is it.
5 Somebody picked them up on the way here today.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. BEGGS: If you prefer, we can take
8 them back and resubmit them tomorrow if we could.

9 CHAIRPERSON GRIFFIS: Yes, let's do that.

10 MS. BEGGS: Okay. We'll send you along 20
11 of them.

12 CHAIRPERSON GRIFFIS: That would be good.
13 Okay. Very well. Thank you very much. Any other
14 last comments, questions rather, of the party in
15 opposition's case?

16 VICE CHAIR MILLER: I have one. Excuse
17 me. What is your basis in law for saying that all the
18 economic evidence should be stricken because it wasn't
19 presented by an expert?

20 MS. BEGGS: Because it's -- oh, you want
21 me to tell you? Because, for one thing, it's hearsay
22 and it wasn't only hearsay, it was rank hearsay. He
23 didn't even identify who his sources were. He came up
24 with some evidence about that, for some reason, the
25 value of the store was going to increase from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 something per square foot to 270 per square foot and
2 that was based on people who, you know, were operating
3 in totally different parts of the city and he didn't
4 even tell us who they were.

5 VICE CHAIR MILLER: Okay. But you didn't
6 object at that point that it was hearsay. But are you
7 also saying that -- what about your economic evidence
8 that you just put in today that was countering that,
9 should that be stricken because that wasn't put in by
10 an expert?

11 MS. BEGGS: Which economic evidence? From
12 the expert?

13 VICE CHAIR MILLER: I thought that you put
14 in some today to counter Mr. Ney's economic evidence.
15 Am I right?

16 MS. BEGGS: Oh, Marie's, Marie's letter?

17 VICE CHAIR MILLER: I don't remember.

18 MS. DRISSEL: Yes.

19 MS. BEGGS: I think that he -- I think
20 that that can be -- that that's certainly a higher
21 quality of economic evidence. I haven't seen that
22 letter, Marie.

23 VICE CHAIR MILLER: Was this your expert?
24 Was this your economic? This is a letter dated April
25 8, 2006 on Coldwell Banker stationery.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BEGGS: Yes, we're perfectly agreeable
2 to saying that we're at a sum zero on the economic
3 arguments, except with -- the only expert testimony we
4 have is what the diminishment in value of the Woodrow
5 buildings will be and so there probably needs to be
6 some kind of balancing of hardships. But I think
7 where it stands right now is that we haven't had any
8 evidence whatsoever that is competent on the issue of
9 economic feasibility, which is a major point they rely
10 on on their March 8th filing.

11 VICE CHAIR MILLER: Okay. Now, I'm not
12 going to pursue this, but I think it may go to the
13 weight of the evidence, as opposed to being stricken.

14 CHAIRPERSON GRIFFIS: I would tend to
15 agree. I think you're going to have to rely on our
16 own deliberation and wisdom in assessing the value and
17 persuasiveness of each of the testimonies that is put
18 in, so then there is nothing that precludes or
19 prohibits an applicant from making statements in
20 support of their application and it's our position
21 that we need to ascertain its value in the
22 presentation of his case.

23 Okay. Anything else? Excellent. Thank
24 you very much for the presentation of that case. Ms.
25 Brown, are you prepared to do closings this evening?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Oh, let me -- I'm sorry. While she gets settled, is
2 there anyone else, persons, to provide testimony on
3 this case? I figured we had gotten pretty much
4 everyone's opportunity.

5 MS. BEGGS: Just, I hate to interrupt you,
6 but before we go, in terms of putting in the
7 supplemental filings that we were talking about, does
8 the Board have a time table that they want us to meet
9 with that?

10 CHAIRPERSON GRIFFIS: We usually do that
11 at the end.

12 MS. BEGGS: Oh, sorry.

13 CHAIRPERSON GRIFFIS: That's okay. At
14 this point, just to assess, I have what I'm -- in my
15 entire notes to this date I think we only have
16 leftover, keeping the record open, for any legal
17 analysis rebutting the legal analysis that was set
18 forth in the case presentation.

19 Their rebuttal testimony will happen now
20 and then I would keep the record open for a proposed
21 order, basically findings and conclusions. There
22 would be no response time on either. Each would be
23 served, but this would be final submissions.
24 Difference of opinion?

25 VICE CHAIR MILLER: Well, yes, I think.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Just on the legal filings, my impression -- what I had
2 asked earlier was that the Lenkin case on which the
3 opposition is relying on was in 1981 and it refers to
4 regulations that have since been amended. And so I
5 wanted to -- I think they should have the opportunity
6 to address why the Lenkin case may still be good law,
7 you know, whether or not the regulations have changed
8 since then, so it would not just be for rebuttal. It
9 would be both parties could address that.

10 CHAIRPERSON GRIFFIS: In which case we'll
11 have responses to each of those submissions, which
12 will add a couple more weeks onto this.

13 MS. BEGGS: Okay. And could I just ask
14 one final question?

15 CHAIRPERSON GRIFFIS: Sure.

16 MS. BEGGS: I'm reminded that our
17 councilman was going to submit a letter and our
18 understanding was that he was going to fax it to you
19 this morning. Did that come in or not? We don't
20 know. We can't find it out. It's Jack Evans is our
21 councilman.

22 CHAIRPERSON GRIFFIS: I don't have it.
23 Ms. Bailey?

24 MS. BAILEY: I can't say absolutely, Mr.
25 Chairman.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay.

2 MS. BAILEY: Because the person who does
3 that is not in today.

4 CHAIRPERSON GRIFFIS: Okay. Thank you.

5 MS. BEGGS: In that event, could just one
6 -- Mr. Chairman, if the letter didn't come in --

7 UNIDENTIFIED SPEAKER: We're still here.

8 MS. BEGGS: Yes. If the letter didn't
9 come in, could we make a request to keep the record
10 open for our councilman's letter? Thank you.

11 CHAIRPERSON GRIFFIS: Yes, I don't see any
12 reason we wouldn't accept that. Okay. Hopefully, our
13 video screen goes off at 6:00, right? Okay. But in
14 all seriousness, there's a couple of things that I
15 think -- what we were actually deciding or discussing
16 very briefly, and I will hear from everybody else on
17 the Board, but is whether the -- the Lenkin case is
18 what we're really discussing and, obviously, the
19 applicant is going to have an opportunity to legally
20 brief the Board on that.

21 What we want to do is go directly to what
22 section 7 -- I forget it now, whichever one it is, but
23 7107.1, I believe it is, is the critical section cited
24 in the court case and Ms. Miller, I think very
25 appropriately, wants to see and the rest of the Board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 has to see what current section that modifies or what
2 regs were talking. Our discussion was based on the
3 fact of will that then lead to new argument and new
4 testimony and that would need to be -- have an
5 opportunity to be rebutted or not.

6 I believe that we feel that we were asking
7 for legal analysis at this point. Therefore, it would
8 not take rebuttal. So each of you are off to address
9 that issue, but the applicant -- well, there it is.
10 Does that make sense?

11 MS. BROWN: Yes.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. BROWN: Okay. And if we need
14 clarification at the end, I'm sure it will be repeated
15 by Ms. Bailey.

16 CHAIRPERSON GRIFFIS: That's right.

17 MS. BROWN: I would like to present John
18 Hensley as a rebuttal witness. Unfortunately, Mr.
19 Sher, our other rebuttal witness, had to leave and I
20 would like the opportunity to submit his rebuttal
21 testimony in writing if that is acceptable to you.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. BEGGS: I would object to that. When
24 do we get a chance to cross examine his rebuttal
25 testimony?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: We can give you an
2 opportunity to -- yes, it's always an interesting
3 point. In the past we have had an opportunity to --
4 I don't know. What do you think?

5 MS. BROWN: I'm perfectly fine if they
6 want to make a submission and respond to his rebuttal
7 testimony.

8 CHAIRPERSON GRIFFIS: Right.

9 MS. BROWN: And we can make it a very
10 quick turnaround, you know, within a week.

11 MS. BEGGS: That's not the same as --

12 MS. BROWN: Or less.

13 MS. BEGGS: I'm sorry. I didn't mean to
14 interrupt, but --

15 CHAIRPERSON GRIFFIS: Right. In the past
16 when we haven't had the availability of a witness to
17 be crossed and they have put in written testimony or
18 rebuttal testimony, we actually give an opportunity to
19 have written cross, meaning that questions are
20 submitted in, it goes and then written responses to
21 those questions. So it takes place. It's a little
22 bit more cumbersome, but it all gets into the record.

23 Agreeable? I will tell you the other
24 opportunity or option we have is that we reconvene.
25 That would be I don't know when in which case we ought

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to just assess that now. We would reconvene and you
2 might as well do closings at that time.

3 MS. BROWN: Oh.

4 CHAIRPERSON GRIFFIS: It is 7:00. I mean,
5 we could certainly, you know, do something else, but
6 I would be happier to get this done tonight, frankly.

7 MS. BROWN: Then we would withdraw the
8 option to submit the rebuttal testimony of Mr. Sher if
9 you think that that's -- I would prefer to submit it,
10 but if that has got to hold things up, I would rather
11 just get this over with, too.

12 CHAIRPERSON GRIFFIS: Any difficulty in
13 doing your cross in writing?

14 MS. BEGGS: I think we would prefer to
15 reconvene.

16 CHAIRPERSON GRIFFIS: Really?

17 MS. BEGGS: Yes.

18 CHAIRPERSON GRIFFIS: It's about time we
19 increase our cost of admission.

20 MS. BROWN: You decide, but, you know, in
21 that case we would just withdraw the submission.

22 VICE CHAIR MILLER: Can you articulate the
23 basis for your objection just for the record?

24 CHAIRPERSON GRIFFIS: Whose objection?

25 MS. BEGGS: My objection to written

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 questions?

2 VICE CHAIR MILLER: Yes.

3 MS. BEGGS: Because I don't think that
4 that's real cross examination. I think then I don't
5 even know whether the witness is answering the
6 question or whether his law firm is. I notice that
7 they all work at the same place.

8 CHAIRPERSON GRIFFIS: Yes, there it is.
9 Let's take two more seconds on this, because my
10 understanding is your issue is not to delay this much
11 further, which I perfectly appreciate, but closings
12 and rebuttal testimony and cross shouldn't take that
13 much time.

14 MS. BROWN: Correct.

15 CHAIRPERSON GRIFFIS: Meaning we could fit
16 this in in a morning session and fairly immediately.
17 Would that be amenable if it was done in the next --

18 MS. BROWN: Mr. Chairman, what I might
19 suggest is letting us go forward with this one
20 rebuttal witness tonight and we would be happy to
21 submit our closing arguments in writing.

22 CHAIRPERSON GRIFFIS: Right.

23 MS. BROWN: If that would shorten it and
24 not necessitate another hearing date, but if this is
25 something you could fit in next week, you know, that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fine, too.

2 CHAIRPERSON GRIFFIS: Mr. Moy, what is
3 your assessment of next week?

4 MR. MOY: Well, as I have said before, Mr.
5 Chairman, they are all heavy and we can slide any in
6 for any date, given it's your time.

7 CHAIRPERSON GRIFFIS: Wow.

8 MR. MOY: Yes, we can do it next week.

9 CHAIRPERSON GRIFFIS: I don't know. The
10 balance is not, frankly, people's schedules or
11 objections, but the Board is getting all the
12 information in and I think it's just important not to
13 keep anything outside of the record. And if there is
14 a witness that was going to be called this evening, I
15 think it's important to have that information in and
16 also to get the reaction for it.

17 So I think it's not a good use of time to
18 set this for another hearing, only because even if we
19 set it in the morning, I can tell you we have three
20 cases next week. That's what we had this morning and
21 we ended at 3:00 in the afternoon. We have three
22 cases in the afternoon, each of which are about three
23 to four hours a piece. We have an incredible volume.
24 The next week we have 10 cases to decide. I have yet
25 to sit on a decision making day where we do 10 cases.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The point is I can fit you in next week
2 and it just bumps everybody up, but it is very
3 productive to have written submissions, I have found
4 in my experience of being on the Board and knowing how
5 the Board deliberates. We take great care and great
6 time to look at all the submissions, the new, the old,
7 as we review. I think we proceed tonight, do the
8 closings, your last witness. Let's have rebuttal.

9 We need to assess whether rebuttal
10 testimony needs to come in in writing, and I will
11 leave it to you to understand that, or is it
12 incorporated within your last filings in terms of your
13 proposed draft orders, conclusions.

14 If you feel that that rebuttal testimony
15 is needed after we go through this, then we're going
16 to take it in writing. We're going to put it out.
17 We'll give adequate response time for questions.
18 Those questions will be answered and then that will
19 finalize the information that the record needs to be
20 filled with. Okay?

21 So let's do this. Let's proceed this
22 evening with what we have and then we'll reassess
23 where we go.

24 MS. BROWN: Our rebuttal witness tonight
25 is Mr. John Hensley, the architect.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Mr. Hensley, could you review again the
2 practical difficulties for this project that would
3 necessitate a deviation from the lot occupancy of 2.6
4 percent?

5 MR. HENSLEY: The first difficulty is that
6 we are dealing with an existing historic building and
7 must maintain the exterior walls along the perimeter.
8 We're also dealing with a single exit stair and it can
9 only go in the center of the building, because there
10 is a maximum length that you can travel in a single
11 exit building, 50 feet from that fire stair, that
12 necessitates the fire stair being located in the
13 center. We have designed these units to be what I
14 believe is the smallest marketable two bedroom, two
15 pairs of two bedroom units, that is possible.

16 MS. BROWN: And what happens if you try to
17 comply with the 60 percent lot occupancy on that one
18 floor?

19 MR. HENSLEY: We have studied the loss of
20 the 107 square feet to see if we could get to two
21 bedroom units and there was just no way that that
22 could be done. So that would mean the meaning -- that
23 it would drop back to a single bedroom in one of the
24 units, two bedrooms on the others.

25 MS. BROWN: Thank you. You heard the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony today about the light and air that would be
2 affected by the construction of this building. Have
3 you done any studies to assess whether or not those
4 assessments are accurate?

5 MS. BEGGS: Objection. Are we now going
6 to get the light and shade studies that you refused to
7 bring in the last time as a rebuttal issue?

8 CHAIRPERSON GRIFFIS: Is the objection
9 that they are not allowed to bring that testimony in
10 at this point?

11 MS. BEGGS: Yes. They have had this all
12 along. They could have served it on us months ago,
13 but we were told -- we were told by Ms. Brown that
14 they were not going to use them in front of the BZA.
15 She flatly wrote that in an email and I can --

16 CHAIRPERSON GRIFFIS: How would I --

17 UNIDENTIFIED SPEAKER: Yes, it's on the
18 record here. It's on the record here.

19 CHAIRPERSON GRIFFIS: I understand that,
20 but I need to look at what would prohibit me from
21 having him answer that question in rebuttal. It may
22 be bad process. It may be bad planning, but I don't
23 see anything that prohibits them from doing it.
24 That's what rebuttal testimony is, is it not?

25 MS. BEGGS: We have not -- they have had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 these studies for months now. They expressly refused
2 to give us -- give them to us, and then to come in and
3 launch them at us with no prior notice I think is
4 grossly unfair.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. BEGGS: Particularly when we
7 specifically asked for them and they specifically said
8 they were not going to use them in these proceedings.

9 CHAIRPERSON GRIFFIS: Understood,
10 understood.

11 MS. FRENCH: And you clearly said that
12 they would not be allowed to submit anything new.
13 What they submitted last time was what we were going
14 to be going on.

15 CHAIRPERSON GRIFFIS: Right, right.

16 MS. FRENCH: That's in the --

17 CHAIRPERSON GRIFFIS: But even the most
18 conservative rules of procedures that we're under
19 doesn't preclude them from providing testimony in
20 rebuttal even if they promise not to do it. You have
21 presented an entire case on light and air. How would
22 I prohibit the applicant from rebutting that testimony
23 on the case presentation that you made?

24 Just like in the reverse, if they didn't
25 talk about light and air, would you be prohibited from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 making a case on light and air? I just don't see how
2 I cannot let the question be answered. You will have
3 an opportunity to deal with it. I'm not going to keep
4 you from dealing with it.

5 MS. BEGGS: Well, I think -- assuming he
6 is coming in with significant new evidence that was
7 requested previously and repeatedly.

8 CHAIRPERSON GRIFFIS: We'll assess the
9 time. We'll assess what it is and we'll assess the
10 time in which it takes you to respond to it.

11 MS. BEGGS: Very well.

12 CHAIRPERSON GRIFFIS: Let's go.

13 MS. BROWN: Mr. Hensley, if you could
14 describe what you -- the boards are over there.

15 MR. HENSLEY: Okay. What we did do is
16 study the sun at two different points of the year.
17 The winter solstice, the top three diagrams, show
18 that. It's pretty much in the morning and the
19 evenings, the shade of the taller buildings surround
20 it, put our building in the shade.

21 CHAIRPERSON GRIFFIS: Can I ask you to do
22 one favor?

23 MR. HENSLEY: Yes.

24 CHAIRPERSON GRIFFIS: Why don't you go get
25 that and bring it closer to you and let's get the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 angle more towards this side here. Actually, just
2 bring that whole easel over. We'll make it more
3 convenient. And that way if you need to point to
4 anything, you can get to it. Whoa, whoa, back up.
5 I'm sorry. Just go right up to the table, that would
6 be perfect, and then angle it out a little bit if you
7 would. Yes, over this way. Great.

8 For one thing, we have a camera that will
9 pick that up and it will also be transmitted. For
10 second, all the people here can see it a little
11 better. If you can't see it, of course, you need to
12 just come around and make yourself available to see
13 it. Excellent. So on the left side we're starting
14 with winter solstice, 8:00 a.m.

15 MR. HENSLEY: Correct. And, as you know,
16 the winter sun is low and only, you know, in the
17 south. We have made one point because there was --
18 someone had stated that our building would put the
19 California House in shadow.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. HENSLEY: This California House,
22 California Court, the two buildings. This area right
23 here outlined in the red is the shadow impact of our
24 building on the lowest summer sun day. As you can
25 see, it does not reach the California House.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The other study that we did was on July
2 2nd at 7:36. We have used our AutoCAD program and
3 were able to plug in that date based on the date and
4 time of the applicant's photo and we recreated the
5 existing, what it is right now, the first one, what
6 our new building would do and then this is a
7 comparison. And if you can tell, there is a lighter
8 gray tone here. This toned area indicates the impact
9 of the addition upon the Woodrow Building at that time
10 on that day.

11 CHAIRPERSON GRIFFIS: On July 2nd at 7:30?

12 MR. HENSLEY: Yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. HENSLEY: I can elaborate a little bit
15 further. The variance that is being requested has
16 absolutely no impact at all upon the solar study.
17 What does impact the solar study and what does impact
18 the shadow is what HPRB and the reasonable guidelines
19 for developing this building are causing us to do,
20 which is to build out to the property line and to
21 build out the length of our Phelps Street facade.

22 What we have done is we have minimized the
23 depth of that Phelps Street facade, you can see where
24 it cuts back here, so that the impact of our building
25 would be limited upon their building.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BROWN: Thank you.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. BROWN: And, based on the photographs
4 that were submitted to the record today, do they
5 change your opinion on what the shadow and solar
6 effects will be of the addition?

7 MR. HENSLEY: No.

8 MS. BROWN: Thank you.

9 CHAIRPERSON GRIFFIS: Okay. Do we have
10 those for the record?

11 MS. BROWN: I do have copies to submit.

12 MR. HENSLEY: I can give you these.

13 CHAIRPERSON GRIFFIS: We don't have any
14 smaller copies?

15 MR. HENSLEY: I can provide them tomorrow.

16 CHAIRPERSON GRIFFIS: Okay. We need to
17 get those out and around. Okay. What else?

18 MS. BROWN: If there is any cross
19 examination of him.

20 CHAIRPERSON GRIFFIS: Okay. Nothing else
21 for this witness?

22 MS. BROWN: Were there any questions you
23 have, that's the extent of his testimony on rebuttal.

24 CHAIRPERSON GRIFFIS: Excellent. Let's go
25 to it. Let me see if I understand. The top

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 photographs, of course, are -- well, I should say, the
2 top are plan diagrams. Is that right?

3 MR. HENSLEY: Correct.

4 CHAIRPERSON GRIFFIS: And they are winter
5 which, as you said, was the sun is lower, is that
6 right, and you do track it from 8:00 a.m. midday?

7 MR. HENSLEY: To 4:00 p.m., yes.

8 CHAIRPERSON GRIFFIS: To 4:00?

9 MR. HENSLEY: Yes.

10 CHAIRPERSON GRIFFIS: Okay. All right.
11 Questions?

12 VICE CHAIR MILLER: Is there a written
13 report that goes with this diagram?

14 MR. HENSLEY: No.

15 VICE CHAIR MILLER: Did you do this
16 diagram?

17 MR. HENSLEY: Someone in my office
18 prepared this and it's based on AutoCAD programming in
19 3D where we filled in all the information of the
20 buildings in plan and in height, and it allows you to
21 type in the date and time to determine exactly what
22 the shade study would do.

23 Obviously, every day of the year the sun
24 is at a different point in the sky all the time. You
25 know, the sun can come from so many different

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 directions. There's only so many things you can
2 model. What we tried to model was the worst day,
3 which is the winter per shade and what would be the
4 least impact day, which inversely is because the sun
5 is so high and comes at such a steep angle from the
6 west, turns out to be the few days where our building
7 actually casts a shadow onto their building. 365 days
8 a year their building casts a shadow on our building.

9 VICE CHAIR MILLER: Okay. Thank you.

10 CHAIRPERSON GRIFFIS: Anything else?
11 Cross?

12 MS. BEGGS: I get to comment. Because I
13 relied on the representation of counsel that there was
14 going to be no light and shadow study, I have done
15 nothing to educate myself on it. I find myself always
16 completely unable to conduct cross examination. I
17 don't even understand what that depicts. I don't
18 understand anything about -- I would have educated
19 myself, but here I am knowing nothing about them. I
20 don't even understand what it is doing.

21 CHAIRPERSON GRIFFIS: Okay. Let's use
22 this time to figure out a little bit, at least, the
23 graphic representation, so we have all of this, so
24 that we all understand the same thing. Looking at the
25 plan, the site is actually two colors. One is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 deeper yellow, one is a more primary yellow. What's
2 the difference in those colors?

3 MR. HENSLEY: The brighter yellow --

4 CHAIRPERSON GRIFFIS: Actually, let's
5 start up top on the plan.

6 MR. HENSLEY: I think we're okay here.
7 The brighter yellow represents the walls. The paler
8 yellow or gold represents the horizontal surfaces.

9 CHAIRPERSON GRIFFIS: Okay. But start up
10 top on the plan.

11 MR. HENSLEY: Um-hum.

12 CHAIRPERSON GRIFFIS: I'm seeing two
13 different shade of pinks, but let's start with the
14 site itself. On the left side, winter solstice, 8:00
15 a.m., there is a small little piece of more primary
16 yellow in the center. What is that?

17 MR. HENSLEY: That's a portion of our
18 penthouse structure.

19 CHAIRPERSON GRIFFIS: Okay. Which would
20 not be in shade? Is that what it's indicating or is
21 in shade?

22 MR. HENSLEY: Part of it is in shade, part
23 of it is not in shade and it's also sloped, so that
24 it's not visible, that's why you get the angle here.
25 It's sloped so that it's not visible from California

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Street.

2 CHAIRPERSON GRIFFIS: Okay. And the next
3 one, now, we're seeing differing colors. The shadow
4 is where?

5 MR. HENSLEY: The shadow again is the
6 golder tone here. This is the shadow of the Woodrow
7 casting a shadow onto our roof. The brighter yellow
8 is the portions of our roof that are not covered by
9 shadow.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. HENSLEY: At that date and time.

12 CHAIRPERSON GRIFFIS: Then we go to the
13 street level.

14 MR. HENSLEY: Yes.

15 CHAIRPERSON GRIFFIS: And a shadow is
16 being cast and then as we go left on that, it's a
17 little bit darker. I'm sorry, the same image on 12.

18 MR. HENSLEY: Oh, okay.

19 CHAIRPERSON GRIFFIS: And the darker
20 shadow, what is that representing?

21 MR. HENSLEY: We tried to create -- we
22 tried to distinguish between the shadow that's created
23 by the existing buildings and the shadow that's
24 created by the addition.

25 CHAIRPERSON GRIFFIS: Okay. So this is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 graphic --

2 MR. HENSLEY: And that's what this --

3 CHAIRPERSON GRIFFIS: -- representation of
4 who is casting what shadow?

5 MR. HENSLEY: Yes, and this is the
6 additional shadow cast by our building at a 42 foot
7 height.

8 CHAIRPERSON GRIFFIS: Okay. And so the
9 last one?

10 MR. HENSLEY: That's at 4:00 p.m. in the
11 evening and the church and most -- the church is
12 casting a very large shadow covering most of this
13 area.

14 CHAIRPERSON GRIFFIS: Why do I have two
15 different colors on the roof of the existing?

16 MR. HENSLEY: Again, this is the church
17 casts a shadow onto the roof of our building.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. HENSLEY: That's this darker piece.
20 Our own penthouse is shading our own roof. The
21 lighter yellow is a portion of our roof on that day
22 that is receiving sunlight.

23 CHAIRPERSON GRIFFIS: Okay. Okay. Three
24 dimensionals, I think, make it a little bit clearer,
25 but the one on the very right at 7:36 p.m.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HENSLEY: Um-hum.

2 CHAIRPERSON GRIFFIS: Walking that
3 through, you have the addition is very transparent.
4 Can you walk through why that is? And there's a
5 different color of the shadow on the adjacent Woodrow
6 building. Do you want to just --

7 MR. HENSLEY: We were attempting to
8 distinguish between the shadow created by the addition
9 and the shadow that was there by the building that's
10 the existing building.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. HENSLEY: And then this shadow here
13 again is the shadow because it's taken late in the
14 evening, this is the shadow created by the church onto
15 both our building, our existing building and onto the
16 Woodrow at that time of day.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. HENSLEY: The lighter tone represents
19 the new shadow or the shadow of the newer addition.

20 CHAIRPERSON GRIFFIS: And state again, you
21 took July 2nd at the same time?

22 MR. HENSLEY: We were provided a
23 photograph that showed the facade and it's in the
24 record here. Well, it's that one. If you can look at
25 that, you can see the sun angles that are represented

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 here on our diagram of their building casting a shadow
2 upon itself, are the same as in the photograph.

3 CHAIRPERSON GRIFFIS: I see. So you
4 picked July 2nd at 7:36 as a comparison in contrast to
5 a photograph that they presented?

6 MR. HENSLEY: It also represents, you
7 know, a very close to the summer solstice, so, yes.

8 CHAIRPERSON GRIFFIS: Which is, as you
9 indicated, a high point of the sun?

10 MR. HENSLEY: It's the high point of the
11 sun and it's also in the high point during the middle
12 part of the day and it's also the point at which the
13 sun comes actually beyond true west. It sets higher
14 than west.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. HENSLEY: More north than west and
17 that's why that facade for portions of the year
18 receives light.

19 CHAIRPERSON GRIFFIS: I see. Okay. Do we
20 need to ask more clarifying questions of what's
21 presented? We'll start with Ms. Miller.

22 VICE CHAIR MILLER: I mean, I would think
23 maybe the community might want to know this and I can
24 relate to them, because I'm not an architect, so when
25 I see these studies it's like how do I know that I can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rely on these studies that they are right? I mean, I
2 don't know what kind of data goes into them. I don't
3 know who it is actually that prepared it. What kind
4 of expertise that person has. Can you just fill that
5 in a little bit?

6 MR. HENSLEY: Okay. The first test is
7 reasonableness. We created these shadow studies and
8 they match up with the photograph, the real-life. We
9 do have very accurate surveys that tell us exactly
10 where the buildings are. We know within, you know, a
11 foot or so the existing buildings around us and we
12 know precisely how high our building is.

13 The program that is used to create the
14 shadows is a program -- it's AutoCAD Auto Desk, it's
15 probably used by maybe 80 to 90 percent of architects
16 practicing today. I would have to -- I'm not an
17 engineer enough to know that it's absolutely accurate
18 perfect, but it's the most popular Cad software in the
19 world. So does that answer your question?

20 VICE CHAIR MILLER: Yes, thank you.

21 CHAIRPERSON GRIFFIS: Cross?

22 MS. BEGGS: Are you saying that you never
23 prepared a report or you just decided not to bring it?

24 MR. HENSLEY: The diagrams are the product
25 of the search or of our study. These are -- this is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the end effect. There is no written narrative that
2 accompanies this.

3 MS. BEGGS: Where would we get the data
4 that went into that, so that we could effectively or
5 conceivably cross examine this?

6 CHAIRPERSON GRIFFIS: What data are you
7 looking for?

8 MS. BEGGS: Any data. I have no idea. He
9 is telling me that this was done by a computer thing
10 by somebody else in his office who isn't even here to
11 tell us what data he put in. Presumably, something
12 had to go in to come up with this. Something had to
13 go into a computer program. What do you call it,
14 CadCam or?

15 CHAIRPERSON GRIFFIS: I don't understand
16 what you're asking for though.

17 MS. BEGGS: What I don't know is whether
18 it's accurate, because if -- I can't look at the
19 underlying data of what he did to create that. In
20 other words, he's saying take me at my word I put in
21 all the coordinates right, but I don't know what
22 coordinates he put in. He said I put in all the, you
23 know, little cardboard things that he has been carting
24 around in this procedure. I have no idea, you know,
25 what he did to do that. I think that the picture

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 looks quite inconsistent with this picture.

2 MS. FRENCH: Ask him who the person is,
3 the name of the person who ran it and what their
4 expertise is.

5 MS. BEGGS: Okay. May I ask a couple more
6 questions?

7 CHAIRPERSON GRIFFIS: Absolutely.

8 MS. BEGGS: Who did the study?

9 MR. HENSLEY: I supervised the study that
10 was prepared in my office.

11 MS. FRENCH: Who did it?

12 MS. BEGGS: By whom?

13 MR. HENSLEY: Kevin Hanlin.

14 MS. BEGGS: And when was it done?

15 CHAIRPERSON GRIFFIS: Wait a minute. I
16 think I understand your frustration and I would like
17 to address that, but doing this isn't getting us
18 anywhere. It's kind of like having architectural
19 plans handed to us and you want to know who drafted
20 them in his office. I think we need to get to more
21 substantive issues, because you don't cross the
22 drafter of the information that's before us. Let's
23 continue.

24 MS. BEGGS: I might, because I don't know
25 what coordinates he put into it. I don't know whether

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 he has the coordinates of that particular intersection
2 right.

3 CHAIRPERSON GRIFFIS: You mean the
4 location of the sun?

5 MS. BEGGS: No. I think -- as I
6 understand how these computer things work is what you
7 have to do is stick a bunch of coordinates in there
8 and say this is oriented this way and this is oriented
9 that way and stick in all that data and then it spits
10 out something like that. There has got to be
11 information. The computer can't just make it up all
12 by itself.

13 CHAIRPERSON GRIFFIS: Yes.

14 MS. BEGGS: So that -- I mean, I would
15 like to say sort of at the very least that I think I
16 would like to -- I would like for us -- given that we
17 were sandbagged with this study, that we would like
18 the opportunity to, at a minimum --

19 CHAIRPERSON GRIFFIS: Sure.

20 MS. BEGGS: -- be able to talk to our
21 own --

22 CHAIRPERSON GRIFFIS: Sure. In fact, the
23 designer wants to address some of these graphic issues
24 and while he is getting ready to do that, let me ask
25 a couple of clarifying questions of the architect of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 how this model is made. You have indicated it's made
2 in AutoCAD meaning you massed out the building as you
3 would mass out your drawings. Is that correct? So
4 these are -- I'm sorry, go ahead.

5 MR. HENSLEY: That's correct.

6 CHAIRPERSON GRIFFIS: So these are -- when
7 we look at the massing on the bottom, those are scaled
8 masses. Is that right?

9 MR. HENSLEY: Yes, that's correct.

10 CHAIRPERSON GRIFFIS: Okay. So,
11 conceivably, you could provide for the record the
12 dimensional aspects of the models on the base, on the
13 bottom, on the July elements, correct?

14 MR. HENSLEY: The dimensional data isn't
15 based on dates or time.

16 CHAIRPERSON GRIFFIS: I know.

17 MR. HENSLEY: It's based on --

18 CHAIRPERSON GRIFFIS: I'm getting up to
19 that though.

20 MR. HENSLEY: Okay.

21 CHAIRPERSON GRIFFIS: Just to correspond
22 with what we're seeing in massing is what you're
23 showing in the drawings. They would have to be
24 identical, would they not?

25 MR. HENSLEY: Yes, they are and --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. HENSLEY: Yes.

3 CHAIRPERSON GRIFFIS: So that is one
4 element of data that would have to have been plugged
5 in to create that model, right?

6 MR. HENSLEY: That is correct.

7 CHAIRPERSON GRIFFIS: Good. Then the next
8 one I think is how it was established, the time for
9 the sun/shade, which I think is something that, unless
10 you know how, we can have provided for fairly quickly.

11 MR. HENSLEY: Are you asking how I chose
12 July 2nd at that time?

13 CHAIRPERSON GRIFFIS: No, no.

14 MR. HENSLEY: No.

15 CHAIRPERSON GRIFFIS: How does the
16 software actually work?

17 MR. HENSLEY: Okay.

18 CHAIRPERSON GRIFFIS: What would you have
19 to plug in to create that diagram?

20 MR. HENSLEY: Okay. You plug in date,
21 time and the location of the project, latitude,
22 longitude.

23 CHAIRPERSON GRIFFIS: And then it
24 generates the sun and, therefore, the shade?

25 MR. HENSLEY: Yes. It's the same program

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we also use to create our elevation renderings.

2 MS. BEGGS: I'm not sure what this proves.
3 One of the things that I am confused about this is
4 that that appears to make the 10.5 foot alley as wide
5 as the sidewalks, and that is why I'm troubled by what
6 I'm looking at here and I'm very disturbed that I
7 haven't -- you know, I haven't seen what the
8 underlying data is.

9 MR. HENSLEY: They are not all that
10 entirely different, the sidewalk on Phelps Street with
11 its curb and sidewalk and the space between, and the
12 10.5 feet between the buildings. It's not all that
13 different, so I believe this is an accurate
14 representation.

15 MS. BEGGS: I don't understand. Are you
16 contending that by adding two additional floors, there
17 is not going to be more shadows cast on the Woodrow?

18 MR. HENSLEY: No, that's not what the
19 study shows.

20 MS. BEGGS: Oh, well, what does it show?
21 Now, I'm more confused.

22 MR. HENSLEY: Do you see this? Do you see
23 the lighter gray tone here?

24 MS. BEGGS: Correct.

25 MR. HENSLEY: That is the additional

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 shadow cast by the addition, this.

2 MS. BEGGS: Okay. During a time when the
3 sun is the highest in the sky?

4 MR. HENSLEY: Actually, no, this is taken
5 in the evening. The sky is -- the sun is fairly low
6 and heading north, so the greatest shadow is created
7 in the late summer evenings.

8 MS. FRENCH: So are you saying that this
9 is the most? Your diagram here is the most severe
10 shadows --

11 MR. HENSLEY: No.

12 MS. FRENCH: -- that ever occur?

13 MR. HENSLEY: No, that's not what I said.
14 I said I have matched it up with this date and time
15 based on that photograph.

16 MS. FRENCH: Well, I think --

17 MR. HENSLEY: I thought that was most
18 helpful.

19 MS. FRENCH: Would it not be most helpful
20 to show the Board the least amount of shadow that
21 would occur and the most amount of shadow that would
22 occur and for how many days this would occur, so that
23 at least we all would understand what the actual
24 impact of shadows would be?

25 MR. HENSLEY: If the Board would like to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 direct me to perform specific studies based on
2 parameters, I can do that, but the sun is in a
3 different point in the sky practically every minute.
4 I can't recreate every single minute. Well, I can,
5 but it's kind of worthless. I can't create a minute
6 of the year but, you know, as you know, for the
7 majority of the year our building does not cast any
8 shadow at all to the south towards the Woodrow.

9 MS. BEGGS: The existing building,
10 correct?

11 MR. HENSLEY: I'm sorry, your question is
12 what?

13 MS. BEGGS: The existing building doesn't
14 cast any shadows. The addition certainly would. I
15 look out at that building every day. I see the sun in
16 the afternoon and it's flat out against it. I mean,
17 it's just inconceivable to me that you're saying that
18 when you have this great big facade --

19 MR. HENSLEY: Okay.

20 MS. BEGGS: -- whereas your picture that
21 it's not going to block the light.

22 MR. HENSLEY: Ma'am, if you look at the
23 photograph over there you will understand that the sun
24 is coming almost directly to the right. You can see
25 the shadows created by the building upon itself. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the sun isn't coming from the north. The sun is
2 coming from the far west.

3 MS. BEGGS: Wait, John, you're talking
4 about this?

5 MR. HENSLEY: Yes.

6 MS. BEGGS: Yes, at this point the sun is
7 over here. That's direct sun, that's not indirect
8 sun.

9 UNIDENTIFIED SPEAKER: Kathleen,
10 microphone, your microphone.

11 MS. BEGGS: Oh.

12 MS. FRENCH: But it's still --

13 MS. BEGGS: It's pretty worthless anyway.

14 MS. DRISSEL: I have a question. I have
15 a question. I have a question.

16 CHAIRPERSON GRIFFIS: What is the time
17 period that has the --

18 MS. DRISSEL: Can I just ask a question?
19 Could you describe what a real good shadow study would
20 entail, not just this one day, this taking one of our
21 pictures that we happened to be able to find, but
22 describe a serious shadow study, because you told us
23 many times that you had done a serious shadow study
24 and then many times you told us it wasn't going to be
25 available. So what does it involve?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COURT REPORTER: State your name, please.

2 MS. DRISSEL: Marie Drissel.

3 MR. HENSLEY: We have -- a good shadow
4 study I would represent as being three points of the
5 year, winter solstice, summer solstice and the vernal
6 equinox at three different times in the day, morning,
7 noon and towards the evening. I would -- that should
8 give everyone a broad range to sort of connect the
9 dots of what a shadow would be.

10 MS. BEGGS: And what about the autumnal?

11 MR. HENSLEY: It's the same as the vernal.

12 MS. BEGGS: Oh, it's the same?

13 MR. HENSLEY: Yes.

14 MS. BEGGS: So where is your vernal
15 equinox version?

16 MR. HENSLEY: I did not bring that.

17 MS. BEGGS: Is there a reason why?

18 MR. HENSLEY: This is sort of the -- this
19 study shows the sun at the worst time of the year or
20 the shade in the worst and best time of the year
21 which, depending on where you sit, is two different
22 times of the year.

23 MS. BEGGS: Well, then you would concede
24 then that this is not a good shadow study because it
25 does not include the components that you just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testified should have been included?

2 MR. HENSLEY: Her question was what was
3 the best. I would say this is a good one.

4 MS. BEGGS: It's not all about shadow.

5 MS. FRENCH: We know that.

6 MS. BEGGS: It's not all about shadow.

7 MS. FRENCH: It's about solid walls.

8 MS. BEGGS: A wall here.

9 MS. FRENCH: It's about privacy.

10 MS. BEGGS: And the sun is over here and
11 I would go out here to cast the shadow.

12 CHAIRPERSON GRIFFIS: You need to turn the
13 mike off unless you want to be on the record. Okay.
14 Any other questions right now?

15 MS. BEGGS: Just one. Does this shadow
16 study tell you anything about the existing light
17 conditions for the residences at the Woodrow, putting
18 to one side whether it's in shadow or not, but just
19 the ambient light that they would be receiving as
20 opposed -- with no addition versus with your addition?

21 MR. HENSLEY: This program does not
22 calculate what you're referring to as the reflective
23 light, I believe?

24 MS. BEGGS: No, I'm referring to just the
25 ambient light. For instance, are you aware that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 artists typically like to have north facing studios
2 because of the steadiness of the light that comes in,
3 not necessarily sunlight which, you know, a western
4 facing side would, but artists usually want the steady
5 light of a northern exposure. And, in fact, those are
6 usually in the highest demand. Was that a compound
7 question or maybe just a real long sentence.

8 MR. HENSLEY: I am aware that painting
9 studios often feature north light as a feature.

10 CHAIRPERSON GRIFFIS: Okay. But then the
11 follow-up, which I think he was answering, was the
12 fact that this doesn't calculate ambient or indirect
13 light into the units that, you know, I think you have
14 to glean from the shading that is represented. Okay.
15 Any other clarifying questions at this point?

16 MS. BEGGS: Only that you would agree,
17 would you not, that the addition of those two stories
18 is going to cast much -- putting to one side the
19 shadows, is simply going to darken the window view.
20 I don't know what to use as a term, I'm not an
21 architect, would darken the air that's outside the
22 windows.

23 In other words, it's going to be darker
24 when you're obstructed by that building than when
25 you're not, correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HENSLEY: Our diagrams do show that
2 the addition will cast a shadow on portions of the
3 Woodrow at certain times of the year.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. BEGGS: Again, I want to reup the
6 question, because I don't think that was what I asked.
7 What I was asking is if you're putting a structure
8 10.5 feet away, it's going to make the room darker
9 than if there was no building there, correct,
10 irrespective of shadows?

11 MR. HENSLEY: The location of the wall
12 brings up the possibility, well, the reality that our
13 building will actually contribute reflected light back
14 towards the north wall of the Woodrow.

15 CHAIRPERSON GRIFFIS: Okay. Anything
16 else?

17 MS. BEGGS: Okay. No, nothing further.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. BEGGS: Except that we would like to
20 preserve our objection to having this come in when we
21 were expressly told that no such thing was going to
22 come in.

23 CHAIRPERSON GRIFFIS: Indeed. Do you have
24 a question? I'm sorry.

25 VICE CHAIR MILLER: I mean, maybe it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because of the lateness of the hour, but I just want
2 to make sure. I don't totally understand what these
3 diagrams reflect. I mean, I think on the one hand I
4 heard you say that some of them reflect the same day
5 as the photo that we have in the hearing room. That's
6 the bottom? Okay. The bottom row?

7 MR. HENSLEY: The bottom three --

8 VICE CHAIR MILLER: The bottom three?

9 MR. HENSLEY: -- images, yes.

10 VICE CHAIR MILLER: And then the top two
11 represent the worst day and the best day?

12 MR. HENSLEY: The top three represent
13 winter solstice, which is when the sun is at the
14 lowest sky, therefore creating the largest shadows.

15 CHAIRPERSON GRIFFIS: Top three are all
16 the same day at different times, morning, noon and
17 evening.

18 VICE CHAIR MILLER: Okay.

19 CHAIRPERSON GRIFFIS: For instance, if we
20 were to ask for additional studies, it would be
21 appropriate to have a winter morning, noon and night
22 or evening, rather, a summer morning, noon and
23 evening, and then one when those seasons switch, which
24 is not inappropriate and I think we probably ought to
25 have that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HENSLEY: I can provide that tomorrow
2 as well.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MR. HENSLEY: One of the things that has
5 occurred though is the summer studies, we have had
6 multiple design schemes changing and changing.

7 CHAIRPERSON GRIFFIS: Understood.

8 MR. HENSLEY: So to create an accurate
9 model you have to start with something that doesn't
10 change.

11 CHAIRPERSON GRIFFIS: Understood.
12 However, what you have here is what is proposed, is
13 that correct, the current modeling?

14 MR. HENSLEY: That's correct.

15 CHAIRPERSON GRIFFIS: Okay. And so if I
16 understand what you're saying, it may not be just by
17 tomorrow that you could produce that. You may need a
18 little bit more time.

19 MR. HENSLEY: I will need several hours to
20 prepare --

21 CHAIRPERSON GRIFFIS: Right.

22 MR. HENSLEY: -- the solar studies for
23 this scheme. We do have one for the larger scheme.

24 CHAIRPERSON GRIFFIS: Right, and I don't
25 want to confuse in the larger scheme, because it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 irrelevant at this point, but I think that would be --
2 yes?

3 MS. BEGGS: I'm fine.

4 CHAIRPERSON GRIFFIS: I think that would
5 be advantageous to do. Let's keep what we have
6 already. The July 2nd I think is an interesting
7 comparison of some of the photographic documentation
8 we have. And then I would suggest that we do just the
9 modeling and not the plan, but that will be in the
10 record which I think is a good diagram for
11 illustration. Question?

12 VICE CHAIR MILLER: Well, for some of us
13 who don't understand it that visually. If he is going
14 to be providing more into the record, can there be
15 somewhat of a description as to, you know, what it's
16 showing, what it's -- okay. I guess my other question
17 is --

18 MS. BROWN: We can provide that.

19 VICE CHAIR MILLER: -- when we see these
20 moments in time, how do we know how long that effect
21 lasts? For instance, the worst case scenario.

22 MR. HENSLEY: A microsecond. It's simply
23 a microsecond. Every moment the sun moves, so the
24 shade changes.

25 VICE CHAIR MILLER: So if you give me --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 if I see a diagram that represents September 10th or
2 something and I have no idea what it's going to be
3 like on September 14th?

4 CHAIRPERSON GRIFFIS: You've got a pretty
5 good idea.

6 MR. HENSLEY: The idea is to --

7 VICE CHAIR MILLER: You have a pretty good
8 idea, because it just goes in a certain direction
9 gradually? Is that why?

10 MR. HENSLEY: And that's the reason for
11 three studies. What you can do is proportionally look
12 at the shadows change. You know that if it's this bad
13 in the winter, it's this in the spring and it's this
14 in the summer.

15 VICE CHAIR MILLER: Okay.

16 MR. HENSLEY: That on September 10th it's
17 going to be about here.

18 VICE CHAIR MILLER: Right. Okay.

19 MR. HENSLEY: At this time.

20 VICE CHAIR MILLER: Thank you.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. BROWN: Mr. Chairman, I would just
23 like to clarify for the record the thought that we did
24 not want to provide these to the record. One of the
25 reasons that we did not provide them to the opposition

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and present them in our direct testimony is because we
2 don't believe this case is about light and air. We
3 believe that it's about a variance relief which talks
4 about practical difficulties, which talks about
5 exceptional conditions and no substantial detriment to
6 the public harm or the Zone Plan.

7 CHAIRPERSON GRIFFIS: Right.

8 MS. BROWN: And when you look at the
9 standard for a special exception, it does talk about
10 adverse effects on neighboring properties. You don't
11 find that same language in the standard for variance
12 relief. So that's why we did not believe it was
13 necessary to provide them to the record, but because
14 they were presented in the opposition's direct
15 testimony, we have offered it as rebuttal testimony.

16 CHAIRPERSON GRIFFIS: Excellent. Good
17 clarification. One last clarification question?

18 MR. BERGEN: May I say one thing? I
19 didn't fill the slips out today, but I did the
20 previous time and I was sworn in the previous time.

21 CHAIRPERSON GRIFFIS: Just state your
22 name.

23 MR. BERGEN: Walter Bergen is my name.

24 CHAIRPERSON GRIFFIS: Excellent.

25 MR. BERGEN: I live at 2153 California

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Street. Just the observation that it's not all about
2 shadows. Light is not all about shadows. If the sun
3 is behind me, my shadow is out in front and I can see
4 fine. If I put my hand in front of my eyes, my hand
5 is not casting a shadow on my face, but I can't see.

6 CHAIRPERSON GRIFFIS: Understood.

7 MR. BERGEN: So the wall that rises up
8 against the building, it's not about the shadow it
9 casts.

10 CHAIRPERSON GRIFFIS: I understand.

11 MR. BERGEN: It simply denies light by its
12 presence.

13 CHAIRPERSON GRIFFIS: Okay. Excellent.

14 MR. BERGEN: So these which are computer
15 models which are extremely difficult to read and to
16 understand what they really say, if you insert some
17 common sense about what light means, it's not all
18 about shadows.

19 CHAIRPERSON GRIFFIS: Sure, sure. Okay.
20 I appreciate that comment. And just to be clear, a
21 light and shadow study is about light and shadow and
22 that's all that's being asked of these. So we
23 understand the rest of the case in opposition. Not to
24 worry, there's a lot more documentation that's in
25 there. We also have plans. But we can't ask more of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this simple program than it actually is made to do.

2 But I think the comparison of the other
3 dates are going to be telling and that will be
4 appropriate for the Board to look at. Okay. Yes?

5 VICE CHAIR MILLER: Ms. Brown, I just want
6 to follow-up on your statement about the light and air
7 in interpreting the variance standard. Is it your
8 position then that adverse impacts to neighboring
9 property's light and air wouldn't fall under the words
10 of substantial detriment to the public good, which is
11 that standard in the variance?

12 MS. BROWN: I'm glad you asked that
13 question, because I have a case cite from Draude v.
14 BZA, if you give me a moment to find it, but the sum
15 and substance of it is that the interests of
16 condominium neighbors next door with respect to light
17 and air does not necessarily equate to the public
18 good. Those are individual interests for a select
19 group of individuals in the community and that the
20 public good is much larger than that.

21 And here it is housing in a residentially
22 zoned district. It is providing a few number of units
23 where the Mayor has asked for 100,000 new residents
24 for the District, so it is consistent with the Comp
25 Plan. It's consistent with the Mayor's goals for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 housing. And so that's the overall public good that
2 we're talking about and its consistency with the Zone
3 Plan for the R-5-B District. And I can put that in in
4 a moment.

5 MS. BEGGS: Do you have that citation?

6 MS. BROWN: Yes.

7 MS. BEGGS: Because there's only --

8 VICE CHAIR MILLER: I have one more
9 follow-up question to that. When we're looking at the
10 public good, which is the standard in here, are you
11 suggesting or not suggesting that it's balancing the
12 public good that's being done by granting the variance
13 and creating this additional -- well, in creating this
14 addition versus impact to the neighbors?

15 MS. BROWN: You're saying that -- you're
16 asking whether or not it's a balancing test between
17 how affects the --

18 VICE CHAIR MILLER: Yes, are you comparing
19 them?

20 MS. BROWN: -- direct --

21 VICE CHAIR MILLER: It sounded like you
22 were comparing them. That there's such a greater good
23 because you're contributing to the housing market,
24 that we should be looking at that as a public good.
25 It sounds like that's greater, in that that's greater

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 than the detriment to the neighbors' light and air.
2 Is that what you're saying?

3 MS. BROWN: Why don't I read from the case
4 that I have in the cite Draude v. D.C. Board of Zoning
5 Adjustment, 582 A.2d 949 (1990).

6 MS. BEGGS: Wait a minute. Can you have
7 the cite again, please?

8 MS. BROWN: The citation is 582 A.2d 949,
9 it's the D.C. 1999 -- 1990 case. And the Draude is D-
10 R-A-U-D-E. There was a similar situation where
11 condominium owners were objecting to an addition to a
12 neighboring building and they objected on the grounds
13 of light and air. I'm quoting specifically "they,"
14 meaning the opposition, "contend that the BZA should
15 protect and enhance the quality of the existing
16 residential property in the District of Columbia,"
17 meaning the condominium building, "and that it failed
18 to live up to this obligation when it granted the
19 variance.

20 The reasoning behind this argument
21 confuses public good with the more narrow interests of
22 the condominium and its unit owners. What is
23 beneficial to them singularly or as a group is not
24 necessarily synonymous with the public good."

25 CHAIRPERSON GRIFFIS: Okay. Excellent.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BROWN: Okay. I can continue with the
2 legal arguments for rebuttal. I'll try to be very
3 quick and I have a very quick closing --

4 CHAIRPERSON GRIFFIS: I'm sorry. While he
5 is assessing that and getting it up and running,
6 you'll do your legal closing and analysis. Is that
7 correct?

8 MS. BROWN: I'll wrap it all in together.

9 CHAIRPERSON GRIFFIS: Okay. Excellent.
10 About 10 minutes, 15 minutes, what are we looking at?

11 MS. BROWN: I think 5 to 7 minutes.

12 CHAIRPERSON GRIFFIS: Let's rather than
13 waste everybody's time with us going further, why
14 don't we get this done now as we are 10 minutes of --

15 COURT REPORTER: One second.

16 CHAIRPERSON GRIFFIS: Sure.

17 MS. BROWN: Thank you, Mr. Chairman. We
18 have had a lot of testimony over the past two
19 afternoons in this case, yet it remains a very simple
20 case. It essentially comes down to whether the second
21 floor of the addition can exceed the lot occupancy by
22 2.6 percent. The other variances, in addition to a
23 nonconforming structure, and structural changes to a
24 building devoted to nonconforming uses are almost
25 technical procedural variances that we're requesting.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 As Mr. Sher testified last month, you
2 change one foot or 100 feet in this building and you
3 are thrown into a variance relief case. What this
4 project does propose is a relatively small addition of
5 only four residential units in an R-5-B District, four
6 units. New housing is not only encouraged under the
7 Mayor's goals, but it is the designated conforming use
8 for this zoned district.

9 The project also reduces the area devoted
10 to the nonconforming retail/commercial uses while at
11 the same time maintaining the highly desirable grocery
12 store. I know that I did not attend the ANC meeting
13 last night, but others who were there commented that
14 that was a significant discussion. We have heard it
15 again today that that grocery store is a highly
16 desirable use. It is quite different from the office
17 use that is described in the Lenkin case, where that
18 was an undesirable use and the citizens and the BZA
19 determined that it needed to be eliminated.

20 I think it is also worth pointing out that
21 this does constitute a de minimis variance, whether it
22 is 2.6 percent or 4.4 percent as the opposition
23 calculated. We know that the Zoning Administrator has
24 the flexibility to grant a variance of 2 percent. So
25 when you get into the 4 percent range, that's fairly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 de minimis for the BZA.

2 And the case of Gilmartin v. BZA describes
3 that the burden of proof will lessen if the nature of
4 the relief is de minimis and they quote from -- in the
5 Gilmartin case it talks about whether or not there is
6 a lesser burden of proof because of the infinitesimal
7 deviation from complete compliance that is clearly de
8 minimis, that is within the de minimis exception for
9 granting dimensional variances.

10 The Board also recognized the nature of de
11 minimis requests in BZA Case No. 16927-A. In that
12 particular case, they decided that the variance
13 request was extremely large, the nature of it, and it
14 was denied, but it was because the magnitude was so
15 great. Here the magnitude is so small that the
16 threshold is lessened. And this is an area variance.
17 It is not a use variance.

18 And in our submissions I know that you
19 wanted some explanation of the Lenkin case. We can go
20 into it in detail there or if you're just limiting
21 that to the transition from the old regulations to the
22 new. I'll be happy to go into it now or we can do it
23 later. But the most important thing, and we submitted
24 it last time, was that the underlying BZA order
25 specifically said that it was an area variance that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 was being requested.

2 That was a conclusion of law and the D.C.
3 Court of Appeals did not overturn that finding of the
4 BZA. And I have heard in the submissions by the
5 opposition that it was expressly considered a use
6 variance. Well, I defy anybody to find that language
7 in that case where it says we overturned the BZA's
8 finding that this is an area variance. It's not
9 there.

10 CHAIRPERSON GRIFFIS: That's the Lenkin
11 case you're talking about?

12 MS. BROWN: The Lenkin.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. BROWN: L-E-N-K-I-N.

15 CHAIRPERSON GRIFFIS: Right, right. Okay.

16 MS. BROWN: And, again, we submitted those
17 to the record back in March 14th. So for the area
18 variance test we do have the unique conditions.

19 CHAIRPERSON GRIFFIS: Thank you.

20 MS. BROWN: Moreover, in other BZA cases
21 the Board has determined that it's an area variance
22 and I have here Application No. or BZA Order No. 16815
23 of Adams Alley LLC. That's a 2002 case and that is
24 where a variance was granted to construct an addition
25 to an existing structure, nonconforming, for mixed-use

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 residential, office and private club and it was in the
2 R-5-B District.

3 So there you have the same exact zone
4 category and you're saying it's an area variance to
5 have office and a private club there. So this is
6 after the Lenkin decision and that has not been
7 disturbed. That is it's still an area variance.

8 The unique conditions here, Mr. Chairman,
9 you pointed out the Clerics of St. Viator. This is
10 absolutely the case that we have here. We have an
11 existing building on the site that is nonconforming.
12 Those are the exceptional conditions here. We also
13 have the exceptional condition of the specific
14 parameters provided by the Historic Preservation
15 Review Board where the building has to be pulled up
16 flush against the street wall, but the most critical
17 one is that it's an existing building on the site and
18 it's a nonconforming building on the site.

19 If we could have a vacant site, we could
20 comply. We can't do that because Historic
21 Preservation is not going to let us tear down the
22 building. We're not going to be able to carve out a
23 back piece of it. We have to deal with the existing
24 building as it is on the site.

25 That is a unique condition inherent in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this particular property. And there is no other
2 property around it in the neighborhood. It is the
3 only one-story commercial building in the entire
4 neighborhood. It is surrounded by large apartment
5 buildings and then row house development farther down
6 to the south and a large church across the street.

7 The practical difficulties you heard Mr.
8 Hensley go into. We have a fire stair that has to be
9 centrally located. We have to get the two bedroom
10 apartments on the second floor. When you start
11 getting rid of that 107 square feet, you lose the two
12 bedrooms. It becomes a one bedroom apartment and that
13 is just not feasible for this project.

14 We have already talked about the
15 substantial, that there is no substantial detriment to
16 the public good and no substantial impairment of the
17 Zone Plan.

18 CHAIRPERSON GRIFFIS: All set? Okay.

19 MS. BROWN: And we don't even need to get
20 to the economic arguments for this case. That was
21 preliminarily submitted when we had a density FAR
22 variance request and we needed to -- when we initially
23 submitted the 2.07.

24 Now that we're at the 1.8 FAR, we're
25 really just dealing with the practical difficulties of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the fire stair, the layout of the apartments and all
2 those, the confluence of those factors, do create the
3 practical difficulties for us. And, again, the
4 threshold is lowered because of the de minimis nature
5 of the request, of the relief being requested.

6 I can go into more of the legal arguments
7 on the section 2003.3 and all the other sections.
8 Given the late time and that it's almost 8:00, I am
9 happy to wrap that up in our proposed findings.

10 CHAIRPERSON GRIFFIS: I think that's
11 appropriate.

12 MS. BROWN: So we will conclude on that
13 note unless you have questions.

14 VICE CHAIR MILLER: I do.

15 MS. BROWN: Okay.

16 VICE CHAIR MILLER: On the legal analysis
17 in this case, especially with respect to practical
18 difficulty in the case law you cited, it seems to me
19 that your practical difficulty in this case arises
20 when you want to do the addition not from the ability
21 to have a residential or a viable operation at that
22 site.

23 And I'm wondering in the cases that you
24 cited or are there cases that really go to that point,
25 as opposed to -- I know that a lot of the cases talk

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 about practical difficulties if they remain the same
2 in the way they were, that they have to change because
3 they are experiencing practical difficulties in
4 complying with the regulations in their current state.

5 Do you know what I'm saying, the
6 difference?

7 MS. BROWN: Yes, I do hear the difference.

8 VICE CHAIR MILLER: Okay.

9 MS. BROWN: And I think in just about
10 every BZA case that comes before you for redevelopment
11 for many of the housing projects that you have looked
12 at, even some of the office projects, you're allowed
13 to keep the -- you can make use of the property the
14 way it was. That is not the test. That's a use
15 variance test.

16 VICE CHAIR MILLER: Well, I hear what
17 you're saying and I just want to know though that the
18 cases that you're relying on and that you cited in
19 that, we're pretty familiar with and I will certainly
20 go back and look at them, but in those court cases do
21 they deal with practical difficulties as a result of
22 the way the property is right then, that they have to
23 make a change or else they won't be viable or they
24 won't serve some other interest?

25 MS. BROWN: That is certainly true of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Clerics of St. Viator, but that was a use variance
2 case.

3 VICE CHAIR MILLER: Um-hum.

4 MS. BROWN: The Tyler case, I think which
5 was the Cooper Houses case, those -- that was an
6 argument, that the buildings were not viable in their
7 current condition. But there are many other cases
8 where the property is viable in its current condition
9 and I can provide those citations in the posthearing
10 submission for findings of fact.

11 VICE CHAIR MILLER: Thank you. I would
12 appreciate it.

13 CHAIRPERSON GRIFFIS: Okay. Any other
14 clarifications at this point?

15 MS. BROWN: No.

16 CHAIRPERSON GRIFFIS: Very well. Thank
17 you very much. We conclude then our Public Hearing on
18 this case. We do have submissions, so let's go
19 through schedule. I think just assessing briefly what
20 we're going to have put into the schedule, we'll start
21 at the end date and set this for decision at our
22 regular scheduled Public Meeting in June.

23 That will give us enough time to get the
24 new information into the record. As I have recorded,
25 that would be the sun studies that are coming in, as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we have outlined. I think we could provide a week to
2 do that. Is that a rational amount of time to produce
3 that, to put it into the record, a week? Okay. So
4 we'll set it off from there. We'll have a week.
5 We'll have two weeks for response to those, one, two,
6 and then we'll have one week for rebuttal to the
7 responses, if required.

8 The last submission then after that is
9 going to be findings and conclusions and the legal
10 analysis and briefing on what we have just gone
11 through in terms of the -- I'm not sure, and then the
12 Lenkin case of the elements that were brought up
13 today.

14 And I think it's important to say, Ms.
15 Brown, you were getting into that and I think it's
16 very important to have clear that what we're looking
17 for is not just to find what section it regulated or
18 was citing in terms of our old regulations and how
19 they have changed to new, but then to get into the
20 substance of the court's decisions and its relevancy
21 here.

22 You did a little bit of that this evening,
23 but I think we would be looking for that and we'll
24 look at the March 14th submission also in the record
25 that dealt with that. Yes, question?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BEGGS: Yes, Mr. Chairman. How did
2 you want the supplemental submissions to be limited?
3 Is it just Lenkin and its regulations or do you want--
4 I'm not clear on what the scope of the supplemental
5 is.

6 VICE CHAIR MILLER: I'm not sure how we're
7 going to separate the proposed conclusions of law, but
8 I think that certainly you should address the Lenkin
9 case and how the regs, when they were amended, either
10 changed, you know, the effect of that case or didn't.
11 But I think that we're also interested, in general, in
12 anything else you want to add about the variance test
13 as it applies to this case.

14 MS. BEGGS: Okay.

15 VICE CHAIR MILLER: Use versus area,
16 whatever, because that's what we're looking at, in
17 general.

18 CHAIRPERSON GRIFFIS: Conceivably, it's
19 not two filings. It could be one if you want to
20 incorporate it, if you want to pull it out. It's
21 obviously going to be in your findings and
22 conclusions, but if you want to pull it out to be
23 direct that would be appropriate, but not required.

24 Okay. Anything else that I have missed in
25 terms of submissions that the applicant is aware of?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BROWN: I'm not clear if you have
2 given a date yet on the proposed order?

3 CHAIRPERSON GRIFFIS: No, no dates.

4 MS. BROWN: Okay.

5 CHAIRPERSON GRIFFIS: Just submissions.
6 Am I missing anything, Ms. Beggs, that you're aware
7 of? Ms. Bailey, are you aware of anything else that
8 we have cited? Yes, you are?

9 MS. BAILEY: Yes.

10 CHAIRPERSON GRIFFIS: Oh, good for you.
11 What did I miss?

12 MS. BAILEY: Mr. Chairman, I have a list
13 of things. I don't know whether you want all of these
14 things, but if you --

15 CHAIRPERSON GRIFFIS: Oh, good. Let's --

16 MS. BAILEY: Okay.

17 CHAIRPERSON GRIFFIS: Let's go through
18 them.

19 MS. BAILEY: The opposition had discussed
20 a supplemental filing on the section of nonconforming
21 uses within structures, that's 2002.4. I'm not sure
22 if you still wanted that or not.

23 CHAIRPERSON GRIFFIS: I don't think
24 we're --

25 MS. BAILEY: That's Chapter 20,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Nonconforming Uses Within Structures. There was a lot
2 of discussion about that.

3 CHAIRPERSON GRIFFIS: Right. No, I
4 appreciate that. That's an excellent point. I think
5 that is going to be part of any of the finalized, it's
6 part of the testimony that was presented today.

7 MS. BAILEY: Okay. Ms. Ellie Wotherspoon
8 is to provide the labels to the photographs that were
9 filed.

10 CHAIRPERSON GRIFFIS: Oh, indeed.

11 MS. BAILEY: They did have photographs.

12 CHAIRPERSON GRIFFIS: We have got a legend
13 coming in for the photographs.

14 MS. BAILEY: Okay. There was some
15 discussion about a rebuttal to Ms. Marie Drissel's
16 statement concerning income that is to be derived from
17 the proposed addition. Did you want that?

18 CHAIRPERSON GRIFFIS: No.

19 MS. BAILEY: No. Father Mateo, there was
20 some discussion of he not being able to be here this
21 evening.

22 CHAIRPERSON GRIFFIS: Good.

23 MS. BAILEY: But the opposition had
24 indicated that they could put a letter in the file.
25 Did you want that, sir?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Good. No, we're
2 going to close the record for submission of any
3 letters, except for we had notice that perhaps a
4 council member was putting in a letter of some sort,
5 which we would say that we would take into the record.

6 MS. BAILEY: Okay. And there was some
7 discussion about a shadow study, some more information
8 from the architect, information that was not presented
9 here today.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MS. BAILEY: Did you want that?

12 CHAIRPERSON GRIFFIS: Yes, I think we're
13 clear on what's being submitted in that. Good.

14 MS. BAILEY: And, of course, findings of
15 fact and conclusions of law.

16 CHAIRPERSON GRIFFIS: Brilliant. Okay.
17 A week from today at 2:00 we'll have the legend to the
18 photographs in and we'll have the additional time
19 studies and those will obviously be served on
20 everybody and put into the record. That is a week
21 from today, which is, Ms. Bailey?

22 MS. BAILEY: A week from today is April
23 25th.

24 CHAIRPERSON GRIFFIS: Excellent. That's
25 the 25th. We'll allow two weeks for a response to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 those studies, which is the 2nd of May?

2 MS. BAILEY: Two weeks from the 25th is --
3 I have May 9th.

4 CHAIRPERSON GRIFFIS: Yes, that makes more
5 sense. The 9th of May. I'm not going to have any --
6 we're not going to need any responses to the
7 rebuttals, quite frankly. I think the information
8 that's in there is in there and we can incorporate
9 anything else that needs to in our final, so that we
10 would have the final submissions due on the 23rd.
11 Let's do it on that. Let's keep them on Tuesdays
12 keeping to the schedule on that 23rd of May at 3:00.

13 MS. BEGGS: I'm sorry. I don't understand
14 what we're going to do on the 23rd at 3:00.

15 CHAIRPERSON GRIFFIS: That's your final
16 submission.

17 MS. BEGGS: Oh, that's the supplemental
18 brief and the findings and conclusions?

19 CHAIRPERSON GRIFFIS: That's correct.

20 MS. BEGGS: Okay.

21 CHAIRPERSON GRIFFIS: Okay. Who needs a
22 walk through? Everyone clear on dates, times,
23 submissions? Excellent. The fact has been
24 established that Ms. Bailey takes excellent notes. If
25 you have any questions on what is to be submitted or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 when, clearly you can call in and talk to the Office
2 of Zoning staff or Ms. Bailey, Mr. Moy.

3 Let's be absolutely clear, as I know you
4 all are, as these submissions are coming in, the
5 record is closed except for all the information that
6 we have now established. With that, also as it comes
7 in it needs to be served everywhere else. We have got
8 a very short schedule up front. Let's use it wisely,
9 so let's get the submissions and make sure we know how
10 everyone is being served. I'm sure this is already
11 established, but let's get that done.

12 Well, there it is. That can be broken
13 down and printed in 11 x 17 or 8.5 x 11s. We'll have
14 those submissions in. With that, just to reiterate,
15 we're going to have those studies and a little bit of
16 a narrative description of each of those, how it was
17 picked and what it is actually showing and I think
18 that's pretty clear.

19 Anything else? Everybody clear then?
20 Excellent. I do appreciate everyone staying so late
21 this evening and we appreciate all of the information
22 that's in. If there is no further business for the
23 Board, let's adjourn.

24 (Whereupon, the Public Hearing was
25 concluded at 8:11 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701